

## Audit and Accounts Committee: Minutes

Date: 25<sup>th</sup> November 2021

Time: 2:00 – 4.35pm

Place: New Shire Hall, Alconbury Weald

Present: Councillors C Boden, N Gay (Vice-Chair), S King, E Murphy, S Taylor and G Wilson (Chair)

Officers: Dawn Cave, Neil Hunter, Tom Kelly, Stephen Howarth, Fiona McMillan, Ben Stevenson; Mark Hodgson (EY), Lisa Blake and Barry Pryke (BDO)

### 31. Apologies for Absence and Declarations of Interest

Apologies were presented on behalf of Councillors Whelan and McGuire (Councillors Murphy and S King substituting respectively) and Councillor Sharp.

Councillor Murphy declared an interest as a Member of Pension Fund Committee, and as a Shareholder Representative (the shareholder being the County Council) for of LGSS Law/Pathfinder Legal Services Ltd.

Councillor Boden declared a non-statutory interest in item 7, and advised that he would not participate in the debate or vote on this item, as he was a member of the Audit Registration Committee of the Institute of Chartered Accountants of England and Wales (ICAEW), who regulate the ability of audit firms to practice in the UK. He further advised that he had recused himself from any matters relating to the Council's existing external auditors, EY, at the Audit Registration Committee. He also declared an interest as a Member of the Pension Fund Committee.

Councillor S King declared an interest as a Member of the Cambridgeshire Pension Board.

### 32. Petitions and Public Questions

There were no petitions or public questions.

### 33. Public minutes of the Committee meeting held 28<sup>th</sup> September 2021

It was resolved unanimously to approve the minutes of the Committee meeting held 28<sup>th</sup> September 2021.

### 34. Committee Action Log

The Action Log was noted.

### 35. Use of Regulation of Investigatory Powers Act 2000 (RIPA)

The Committee considered a report from the Head of Information Governance on the Regulation of Investigatory Powers Act 2000 (RIPA). The Committee received an update every year, and the report set out activities and any changes to policies

and procedures, as well as explaining when covert surveillance might be undertaken. It was noted that approval had to be sought from a magistrate before using any of these surveillance powers, including CCTV. No RIPA powers had been used in the previous twelve months.

It was noted that there had been no test purchasing, as the pandemic had focused efforts elsewhere within Trading Standards, but it was anticipated that it would be used again in future. Any intelligence from Members or the public on these matters was always welcomed by the Trading Standards team.

There had been a very positive Inspection in January and February 2021 by the Office of the Surveillance Commissioner. As a result of the Inspection, the guidance provided to officers had been updated and improved, and the report listed the changes made.

One Member commented that it was a very interesting report, and she understood how the issue of surveillance and test purchasing had been less of a priority during the pandemic period.

A Member queried the reference to further research regarding social media. The officer explained that the growth of social media meant that from a fraud perspective, a lot of intelligence could be gained from the computer desktop, e.g. from Facebook and Twitter, and through internet searches. However, officers needed to bear in mind that just because this information was available in a public setting, repeatedly monitoring or gathering such information could be regarded as surveillance. It was important that officers were alert to this when undertaking background research.

The Committee resolved unanimously to:

- a) Receive the updated Regulation of Investigatory Powers Act 2000 (RIPA) policy;
- b) Note the use of powers contained within RIPA.

### 36. (a) External Auditor's Value for Money Conclusion for year ended 31st March 2018

The Committee considered a report on work undertaken regarding Value for Money issues by the auditors, BDO, in relation to their final audit for the year ended 31<sup>st</sup> March 2018. The Chair welcomed Lisa Blake and Barry Pryke of BDO to the meeting.

Introducing BDO's report, Ms Blake explained that a local resident, Mr Mason, had raised an objection with BDO regarding the County Council's draft accounts for 2016/17 and 2017/18. As appointed auditor at that time, it was BDO's job to look into concerns raised and determine whether they were valid or not. Objections were taken very seriously, and the objections that had been raised by Mr Mason were complex and wide ranging.

One of the issues raised related to procurement arrangements and tendering procedures. There were also other matters brought to BDO's attention during preliminary discussions, so it was clear that a 'bigger picture' view needed to be

taken in terms of procurement, to ensure weaknesses were not systemic, and issues had been addressed.

For 2016/17 the objections related to the consultancy services contracts to V4 Services Ltd, and BDO were satisfied that there were no material concerns, so a VFM assurance was issued for 2016/17.

In 2017/18 there had been a long investigation by PKF Littlejohn into Community Transport, as well as other reports brought by Internal Audit on related issues. Much of that information overlapped with BDO's responsibilities as external auditors for 2017/18, and they had sought to ensure issues were not systemic and that there were no material concerns. A thorough review of material contracts was undertaken. This had been a long and detailed review which required a significant amount of information. That work had now been concluded.

The next step was to issue the VFM conclusions. Some of the matters raised by Mr Mason were relevant, and BDO had responded verbally to Mr Mason regarding various parts of those objections. Other matters needed to be addressed, and the formal response to Mr Mason issued in a "statement of reasons". Following this, the external audit for 2017/18 would be formally certified as complete.

The report summarised the VFM risks identified. A report had been considered by the Audit & Accounts Committee in July 2018 regarding sustainable use of resources and income generation. In 2018 the procurement risk had been identified but the work had been at a very early stage at that point.

Although identified as significant VFM risks, there was nothing else to report on the sustainable deployment of resources and revenue generation since July 2018 which gave BDO cause for concern on the arrangements that were in place.

With regard to procurement, that work had now been concluded. Material contracts had been reviewed, along with the documentation behind those contracts, which had resulted in a number of findings. It was confirmed that the contract procedure rules were in place to support officers in procuring contracts, including all the relevant requirements expected, so BDO were satisfied that the underlying documented process was there. However, in instances highlighted in report, it was not possible for the Council to demonstrate those procedures were followed. Two contracts were specifically identified in this respect, which also involved a breach of EU procurement law. In the case of the V4 contract, the review identified that one month of costs paid to the supplier did not have a live contract; related matters had already been reported to Committee in 2018 through an Internal Audit report.

In terms of the winter gritting contract, the review identified that the tender process had not been undertaken in accordance with the rules. Potential contractors had been approached directly, and it was not possible for the Council to demonstrate that the waiver process, i.e. the system in place to gain authorisation for an exception, had been followed at that time. The total value of the contract was in excess of the threshold above which the tender should have been advertised in the OJEU (Official Journal of the European Union).

As a result, BDO had asked their legal advisors what the implications were regarding the lack of formal tender process and the apparent breach of EU procurement law. The report highlighted that there were two differing views of this, and as a result of the discussion with legal advisers, BDO were not proposing to take these matters to

the High Court for determination, recognising that there were differing legal opinions on these points, and given the nature of the contracts and the current position. However, a number of recommendations were presented, and a separate report by the County Council's Section 151 Officer outlined how these would be implemented.

As a result of the findings, the VFM conclusion for 2017/18 would be an "Except for" conclusion, i.e. except for the matters identified above. The report set out the reasons for that conclusion, subject to confirmation by BDO's technical team.

In response to BDO's presentation, a Member fully accepted the findings, including the comments about lack of materiality and regarding legal breaches. Despite that, he felt it was difficult to understate the importance of what has been reported. There were two clear breaches which had occurred in slightly different ways. One has arisen due to the cumulative effect of extensions to supplier services, which was understandable due to the complexity of the process, but still inexcusable. However, the second issue relating to the winter gritting exercise was appalling, and should have been picked up by Members (Highways Spokesmen) or officers. It was vital that Members were aware of the way in which these failings took place, and it was vital to ensure that information and training was available for Members to ensure that these issues did not arise again.

A Member asked how confident BDO were that only these two contracts were affected; he also asked if BDO had any views about what should be done internally to improve officer and Member governance around contracts. BDO representatives advised that they were relatively confident because of the way audit work structured that these were only two contracts *which were material* and had breached procurement law. There were other contracts which demonstrated other weaknesses, and this was implicit in the recommendations made. With regard to potential Council actions to improve officer and Member governance, BDO commented that it was inappropriate for them to comment on actions that the Council should take in that regard. The Council had responded to all recommendations, both in the report and in discussion.

The Chief Finance Officer accepted the findings from the report and recommendations to improve procedures. The current External Auditor, Mark Hodgson of EY, advised that EY had not commenced their VFM work for 2018/19, 2019/21 and 2020/21, as they had been waiting for BDO to complete this work. EY would be following up on the findings of this report in relation to each of those years, and assess the impact it had on their VFM conclusions.

36. (b) External Auditor Value For Money opinion for 2017-18 and response to findings of procurement weaknesses

The Committee considered a report setting out the Council's response to the External Auditor VFM opinion. As explained by BDO, as a result of the procurement weaknesses detected, the Council would receive a qualified opinion on an "Except For" basis for 2017/18. The Section 151 Officer acknowledged that this was a serious matter, and outlined the actions that were being undertaken in response. He further acknowledged the Members' understandable concerns, especially with regard to the Winter Gritting contract, which was still in place. However, this contract had not been challenged under the declaration of ineffectiveness procedure, and a successor contract would be coming into force shortly. The Council's view was that it was a legal binding and valid contract for the remainder of the current duration.

In terms of applying the findings of BDO's work, a number of processes had already moved on. Consultancy expenditure issues had been detected in 2018 by Internal Audit and reported to the Audit & Accounts Committee. The report set out the improvements and steps that continue to be taken in response to BDO recommendations. A number of systematic improvements had been undertaken, with the Contract Register now sitting within ERP Gold, the Council's accounting system, meaning that it was readily available to contract managers and there was a much stronger link between expenditure leaving the organisation and the contract registry. The waiver and exemption process was also handled in a completely different way, and was digitally recorded.

There was now a stronger voice and weight for the procurement function, evidenced by the sign-off of all Committee reports by the Head of Procurement, which was well established. Following the disbanding of the LGSS Procurement team, the procurement function was more focused on Cambridgeshire and was now within the S151 Officer's team. There was also an increased emphasis on communications and training across the board, and mandatory training for officers would be considered.

The Section 151 Officer concluded that whilst these were difficult findings for the Council, he was pleased that the report had now been received, and work could begin on the recommendations. He also invited the Committee to bring these serious matters to the attention of all Members through its Annual Report to full Council.

The Committee discussed the involvement of Members in procurement. A Member observed that generally, Members were not interested in the technicalities of procurement processes, but they should be, and this was particularly important for the Chairs and Vice Chairs of Committees. Another Member observed that this was a technical area and ultimately they would always rely on officer advice.

The Interim Head of Procurement advised that he had been reviewing the processes and procedures, and he stressed that simplicity was key. He had completely rewritten the contract procedure rules, and had also written a simple procurement guide, and introduced many standardised documents. A procurement plan had been introduced which should form part of any Committee report proposing procurement so everyone was aware of the benefits and risks of any procurement exercise. It was vital to agree the process in advance of any procurement.

Whilst agreeing with other Members comments, especially regarding training and awareness, a Member asked what would happen if there was an error, and whether there was a feedback loop to identify any performance issues. Officers confirmed that feedback and learning lessons was crucial and would remain part of the process.

At the invitation of the Chair, Councillor Boden introduced a number of amendments, which had been circulated to the Committee in advance of the meeting. Whilst appreciating that many processes had improved since 2017/18, there were many officers involved in procurement issues, and they needed to be supported. Similarly, there should not be too much delegation to officers and reliance on their expertise, and significant contracts needed to be overseen by Members. He also highlighted that there were other procurement issues which were not illegal, but need to be addressed, such as extensions. These were usually required for practical reasons, but when extensions were exercised, there was less scope to prove that best value for money was being achieved. He also expressed concerns about the variable

sensitivity of scoring systems involved, and he cited an example where the variability of the scoring system skewed the assessment of the balance between price and quality.

With regard to Member involvement and decision making, there were now much stronger processes within Council, and it was well understood that procurement decisions above £500,000 had to go to Committee; this made it more astonishing that this large contract did not go through the right channels in 2015.

The Head of Procurement highlighted that it was more evident, because of the contract register/ERP, when procurement contracts were above a certain level. There was now also a well established waiver system. He agreed with the Member comments about multiple extensions, and stressed that planning and preparations were key. If extensions were anticipated, these should be planned into the contract from the outset.

One Member asked if it would be possible for officers to provide some standard questions Members should be asking when presented with a procurement decision. It was also suggested that procurement contracts could be a standing item on Service Committee agenda plans. The Chair agreed that future major procurement exercises should be highlighted, and that Members who were less familiar with procurement needed to be equipped to ask the right challenging questions.

The following amendments to the report recommendations were proposed by Councillor Boden, who had given the required notice. This amendment had been subject to further minor amendments by other Committee Members. The amendment was in addition to recommendations (a) to (c) set out in the report. In discussion, the Committee agreed the following final wording for the amendment:

*(d) include as an annual agenda item at a meeting of the Audit and Accounts Committee the following:*

*(i) the number and descriptions of current and future procurement exercises and resultant contracts, waivers and extensions that are awarded and any numbers that fail to meet Council and legal requirements;*

*(ii) the number of extensions to contractual scopes and/or periods with justification for such extensions;*

*(iii) that training is provided and reported to this Committee for both Members and for relevant Officers, of the impact of variable sensitivity of scoring systems as part of an overall training package relating to procurement;*

*(iv) that the role and appropriate balance of Member involvement and Officer delegation in the planning, execution and determination of procurement exercises is adequately documented.*

It was resolved unanimously to:

a) Receive the report of the external auditor regarding their use of resources value for money opinion for 2017-18;

b) Note and comment on the County Council's response to the findings, set out in this report;

c) Draw this matter to the attention of the Full Council in December, through the Committee's annual report

(d) include as an annual agenda item at a meeting of the Audit and Accounts Committee the following:

(i) the number and descriptions of current and future procurement exercises and resultant contracts, waivers and extensions that are awarded and any numbers that fail to meet Council and legal requirements;

(ii) the number of extensions to contractual scopes and/or periods with justification for such extensions;

(iii) that training is provided and reported to this Committee for both Members and for relevant Officers, of the impact of variable sensitivity of scoring systems as part of an overall training package relating to procurement;

(iv) that the role and appropriate balance of Member involvement and Officer delegation in the planning, execution and determination of procurement exercises is adequately documented.

One Member commented that whilst he would be supporting the amendment, he felt that this legacy issue related to the failings of the previous administration, which was now being addressed by the current joint administration. Two other Members commented that it was inappropriate to apportion blame in this way and this issue should not be politicised.

The Chair thanked the BDO representatives for their hard work in resolving this issue.

### 37. Arrangements for the appointment of external auditors from 2023-24 to 2027-28

The Committee considered a report on the arrangements for the Council's external auditors for the period 2023-24 to 2027-28. External auditors were currently appointed through Public Sector Audit Appointments Ltd (PSAA), a subsidiary of the Local Government Association. The PSAA procured a range of audit contracts on behalf of opted-in bodies and determines who will be each body's external auditor. In 2014, the County Council opted into this arrangement, along with the majority of local authorities. PSAA had been nominated as the appointing body by the Secretary of State.

The process going forward, and the options available to the Council were outlined, including the option for the Council to appoint its own external auditor. However, this would require the Council to set up a local Independent Auditor Panel (IAP). Opting in to the PSAA approach was likely to be most cost effective, especially as an IAP did not have to be set up and maintained. The scope of external audits continued to be specified nationally, and the National Audit Office was responsible for writing the Code of Audit Practice which all firms appointed to carry out local authority audits must follow.

It was resolved unanimously to:

recommend that Full Council accepts Public Sector Audit Appointments' invitation to opt into the sector-led option for the appointment of external auditors to principal local government and police bodies for five financial years from 1 April 2023.

*(Councillor Boden abstained from the vote)*

### 38. Audit and Accounts Committee Annual Report to Council 2020-21

The Committee considered the draft Audit and Accounts Committee Annual Report for 2020-21, which summarised the Committee's annual work programme. The Annual Report would be presented to the December meeting of full Council by the Chair, to give assurance to full Council and stakeholders that the Committee had fulfilled its responsibilities, set out in paragraph 1.5 of the covering report. The Report would be updated to reflect the outcomes of the Committee's discussions on the earlier item, relating to the External Audit for the year ending 31<sup>st</sup> March 2018.

A Member suggested including the number of ongoing Whistleblowing cases, which was included in the Progress Report, in the Annual Report which was submitted to Council.

It was resolved unanimously to:

- a) review and comment on the attached draft Report;
- b) refer, with any changes from discussions at the meeting) the Annual Report to the Council meeting on 14th December 2021.

### 39. Internal Audit Progress Report

The Committee received a progress report on Internal Audit, for the period to 5<sup>th</sup> November 2021.

Presenting the report, the Head of Internal Audit highlighted:

- Members were reminded that at every Committee meeting an update on the Highways audit was provided, retrospectively looking at reconciliations. It was hoped that that work would be completed shortly, and a report would be presented to the Committee in February 2022, detailing the work completed to March 2020. Some "over-recovered" monies had been retrieved as a result of this exercise;
- Another major piece of work on compliance relating to contract procedure rules, relating to the earlier report from BDO. Again, this would be included in a further report in February 2022;
- Members noted the summary of finalised assignments, and that no reports were Limited or No Assurance;
- The summary of outstanding recommendations was noted. Many related to the Capital Programme Governance Review, where the due date had been



extended to 31/01/22. The report outlined the reasons for that delay which primarily related to recruitment of the new management team within the Service;

- It was noted that Appendix A to the Update had been omitted, and this would be circulated to the Committee **Action required**;
- Members were asked if the Audit Plan for the next 4 quarters reflected where they believed the audit resource should be targeted.

Arising from the report, a Member noted the proposed action for the first quarter relating to the recommendation from a previous audit that a monthly report of all purchase orders above £100K raised in the last month was extracted from ERP, and that these were compared to the known contracts, to check for contracts above £100K that were not overseen by the Procurement Team. The Procurement team had indicated that this would be too expensive for them to implement so Internal Audit would instead conduct compliance testing on this key control. The Member asked how this compliance testing would take place in practice. Officers advised that a full compliance test to ensure key controls were being complied with routinely would be undertaken, and spot checks would also be carried out. The Member commented that the issue was the failure to carry out recommendation from a previous audit, and he was concerned that the intent from that previous recommendation was being not fulfilled. Officers agreed to check this and report back to the next meeting.

A Member queried the 20 days allocated for the “Client side review relationship” with Pathfinder Legal Services Ltd. Officers advised that the 20 days were indicative, but in essence, the audit would be reviewing the contract management arrangements between the Council and Pathfinder Legal Services, to ensure that the Council was getting Value for Money from the contract.

A Member observed that there was nothing specific in the Audit Plan regarding the impact of Covid-19, both the direct and indirect effects, including the additional work created and additional grants received, how these had been managed, the costs, and the many indirect effects of the pandemic on the Council’s services. Officers outlined the actions undertaken last year, especially in terms of contract management, and how appropriate governance procedures had been put in place to look at any financial impact on contractors that needed to be supported. However, the pandemic was not being audited separately. The Member commented that there were consequences that do not normally fit into any particular area, e.g. the volume of homeworking. It was noted that Covid-19 had been included on the Council’s Risk Register last year, but this was now considered “business as usual”, and issues such as business continuity were covered in the Risk Register. With regard to issues such as homeworking specifically, this would be picked up if Key Performance Indicators (KPIs) were not being met.

A Member raised the issue of the KPIs for the Highways contract, which should be used as levers to continually improve that Contract. It was noted that a specific review of the Highways Contract was being undertaken, including the appropriateness and value that those KPIs provided to the Council. It was agreed that this would be brought back to Committee in February. **Action required**. The Member commented that he had serious concerns about the appropriateness of the KPIs highways contractors and the Council were currently working to, and he would welcome further information and review of this area.

A Member asked if there was any monitoring or audit of the significant amounts of funding flowing into the Council, e.g. from the Combined Authority. The Member was assured that grants were thoroughly audited, and it was noted that Section 106 accounting was referenced in the report.

In response to Member concerns raised about This Land, officers advised that the company was subject to an independent review that would shortly be reported to the Leader and Deputy Leader, and would then be considered by Strategy & Resources Committee in January 2022. It was envisaged that this would be a helpful piece of work in terms of ascertaining the risks associated with This Land, and the Committee would have an important role in acknowledging and monitoring those risks and any remedial action required. An internal audit was also planned for early 2022.

It was resolved unanimously to note and comment on the report.

#### 40. Financial reporting and External Audit update

Members considered a report setting out the key exceptions in the latest report on the current financial position of the Council. The report included a link to the Integrated Finance Monitoring report, and also set out progress with the External Audit for 2020/21.

Mark Hodgson, External Auditor, advised the external audit was going well. Contrary to any media reporting, EY had not yet concluded the audit, nor had they reported any outcomes, or concurred with any judgements management had made in preparing and publishing draft financial statements. All conclusions would be reported in the External Auditor's report at the appropriate point.

Whilst acknowledging that BDO had not yet signed off the VFM report for 2017/18, a Member asked what EY's plans were for signing off previous years' VFM reports. Mr Hodgson confirmed that EY had been liaising with BDO and had commenced some of that work already.

The Member also asked about the single objection received by EY, which was referenced in paragraph 2.2.8 of the report. It was confirmed that the objection covered a number of areas, some linked to the accounts, others to VFM areas. It was agreed that a summary of the objections would be appended to the minutes. (see **Appendix 1**) It was confirmed that the External Auditors needed to determine whether this objection was valid. It was agreed that the appendix listing the objections should highlight that whilst the objections had been raised, they had not necessarily been accepted by the External Auditors at this stage.

It was resolved unanimously to:

Note and comment on the report.

#### 41. Audit and Accounts Committee Agenda Plan

Members considered the Committee's forward agenda plan. It was agreed that the annual report on procurement would be added provisionally to the May 2022 meeting.

It was resolved to note the Agenda Plan.

#### 42. Exclusion of Press and Public

It was resolved that the press and public be excluded from the meeting on the grounds that the report contains exempt information under Paragraphs 1 & 5 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended, and that it would not be in the public interest for this information to be disclosed information relating to any individual, and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

#### 43. Farms Audit Report

The Committee considered a verbal update on the Farms Audit report. It was noted that a further report was planned for the next Committee meeting in February.

It was resolved unanimously to note the report.

An objection from an individual local elector was lodged with the auditor dated 13 September 2021. The contents of the objection included the following claims:

- £160m false accounting in respect of revenue and reserves – the objector traces the history of the Council recognising City Deal grant ahead of actual cash receipts and suggests because of grant conditions and other reasons the Council is not accounting for the income in compliance with code of practice;
- V4, Bloom, De Poel/GRI and alleged procurement fraud – the objector reports on the history and context of these suppliers and previous audit enquiries. The objector criticises the procurement controls over the appointment of consultants at CCC and the actions of current and former chief officers of the Council in relation to this matter;
- This Land – the objector reported that he was awaiting the annual reports and accounts for This Land to be available in full and specific additions to the objection may be added as a result.

The objector also stated that he had been repeatedly denied documents he had requested under section 26 of the Local Audit & Accountability Act 2014 during August 2021 and that he had been obstructed by Council officers and therefore wished to reserve his position to add to his objections. The objector went on to describe a wider context, beyond CCC, in which many public servants are hostile to transparency.