

SPECIAL MEETING OF AUDIT AND ACCOUNTS COMMITTEE: MINUTES

Date: Wednesday, 31st October 2018

Time: 1.00 p.m. – 2.38 p.m.

Place: Kreis Viersen Room, Shire Hall, Cambridge

Present: Councillors: J French (Substituting for Cllr Wells) P Hudson, N Kavanagh, M McGuire, M Shellens, (Chairman), and J Williams

Apologies: Councillors T Rogers (Vice Chairman) and D Wells

126. DECLARATIONS OF INTEREST

None received

127. PETITIONS AND PUBLIC QUESTIONS / SPEAKING REQUESTS

No petitions had been received by the deadline of five working days before the meeting.

Two speaker requests were received, one from Carole Mansell and one from Jody Day both from C and G Coach Services. As they were unable to attend the meeting, Democratic Services read out their submissions / questions and at appropriate points, a response was provided orally by the Executive Director Place and Economy and the full text of the submissions and responses are included as **an appendix to the Minutes**.

Questions of clarification raised from the responses provided included asking in respect of the PCV Licence what were the Council's procedures to ensure correct licences were carried and what checks were undertaken to ensure the drivers were correctly qualified? In reply it was indicated that all the Council's contracts required the correct vehicle and driving licences to be in place. Checks were undertaken with the operators against a list of both sets of licences. In addition, spot checks were carried out. It was highlighted that there was no legal requirement for drivers to carry their driving licences. For the Council to carry out a full check on the national data base would require their permission to be given. Checks are carried out with the Driver and Vehicle Standards Agency (DVSA) twice a year as they had access to the National Data Base and are the enforcement body. .

Issue raised in subsequent discussion included;

- On the frequency of the spot checks, the response was that they were carried out on a regular basis and as already indicated DVSA checks were carried out twice a year. There was a request to ensure that spot-

checks were carried out at the roadside. It was indicated that this would be included in the grant framework.

- Regarding the checking regime for drivers of school transport vehicles the Monitoring Team had a set programme to cover primary, secondary and special schools and checked 4-8 schools a week. If anything untoward was reported to the team, this would be checked out the same day.
- There was a question regarding how breaches of the regulations were reported back to the relevant committee. It was reported that Children and Young People's Committee (CYP) received details if there were concerns regarding Special Education Needs Transport or breaches of licences.
- While children's transport appeared to be covered in terms of reporting mechanisms to Members, there was a request to investigate if there was a similar reporting process for any breaches of Licences with Adults Committee. **Action: Assistant Director Cultural and Community Services Christine May.**
- The Chairman requested that he should be made aware of any licencing breaches. **Ongoing Action: Assistant Director Cultural and Community Services**
- It was confirmed that relevant monitoring officers were aware of the licence requirements but that there was still some ambiguity around how to apply the regulations. Officers were, however, working closely with the Traffic Commissioners who were aware of the issues.

It was noted that the oral responses provided to the questions as set in the appendix to the minutes would formally be sent to the questioners within 10 working days of the meeting in the name of the Chairman. **Action: Assistant Director Cultural and Community Services in liaison with Chairman**

128. COMMUNITY TRANSPORT ACTION PLAN WORKING GROUP PROGRESS REPORT

Following the major review of Community Transport in Cambridgeshire, the special public meeting of this Committee on July 31st 2018 had reviewed the detail of the Action Plan presented by the Chief Executive. Additional actions were agreed at the meeting, and these had been added to a final full action plan. It was agreed that this Committee would maintain oversight of the implementation of recommendations, to ensure they were carried out as planned. At the September Committee it was agreed to set up a working group open to all members of the Audit & Accounts Committee and the substitutes who attended the 31st July meeting which had subsequently met to undertake an early review of the implementation of actions in advance of the report included on the agenda.

A copy of the full Action Plan consisting of 66 actions was included as Appendix 1 to the report. At the time the report was written, of these actions the following progress had been made:

- 4 were ongoing actions with no expected end date (6%)
- 46 were reported as being complete, with evidence provided (70%)
- 4 were reported as complete but were awaiting evidence to be provided (6%)
- 12 were reported as still being in progress (18%)

The Committee's views were sought on whether the actions were still considered appropriate, proportionate, and sufficient and whether following the implementation of the actions, FH&E should be considered a fit and proper organisation to contract with the Council. Three issues were raised by Internal Audit for further consideration as detailed below, which were taken as individual discussions and where appropriate voted on.

1. Checks on member eligibility:

The Action Plan which went to Committee on 31st July stated as an action (section 43):

“Include in the revised Grant Agreement more detail around the expected checks of eligibility that recipients must undertake on new members. This should include some form of checking to independent documentary evidence to verify e.g. age, proof of address or other relevant documentation relating to the criteria under which membership is sought.”

The Grant Agreement was updated accordingly, to specify that Community Transport operators in receipt of grant were required:

“...to ensure that all of their members meet the required eligibility criteria, i.e. that all passengers, through rural isolation or mobility difficulties, would have difficulty in accessing or using conventional buses. This may be through verification of identity documents, proof of address or other appropriate documentation.”

An officer from LGSS Internal Audit team had visited FH&E to verify the implementation of agreed actions including a review of the implementation of a new membership process. The detail of the process used by the operator was set out in the report.

Two community transport operators from a neighbouring county were also contacted to ascertain their membership processes. One operator awarded membership on the basis of a telephone call; the other required prospective members to complete a membership form (like FH&E) and then conducted a telephone call to verify eligibility. Internal Audit indicated that the process in place at FH&E appeared to be in line with processes at equivalent operators elsewhere, although at the time of the report's preparation the operator was not conducting verification of documentary evidence as originally envisaged by the Community Transport Action Plan.

There was discussion to consider whether the process being undertaken by FH&E provided sufficient assurance over the eligibility of FH&E members or whether full checks should be carried out on all prospective new members.

The majority view was that full checks as required by the grant agreement should be undertaken, including verifying documentary evidence, as with the receipt of public money, came conditions that needed to be adhered to. Verification via a telephone call was not considered appropriate as with the problems of the past, the County Council should be looking to adopt a best practice approach.

There was a request for details of approximately how many new application checks would be undertaken annually. As this could not be answered, this would be investigated and reported back. **Action Assistant Director, Culture and Community Services.**

It was resolved:

That full checks should be required for all new members retaining documentary proof of said checks, along with spot checks being undertaken on members to ensure continued compliance.

2. Access to Membership Data and General Data Protection Regulations

The new Grant Agreement required that membership data should be shared with the Council on request for the purpose of grant monitoring, and that grant recipients must seek the consent of their members for the sharing of data.

At the beginning of October FH&E members were sent a letter intended to ensure that FH&E were fully compliant with the new General Data Protection Regulations (GDPR) stating that *“your information will not be shared with third parties and you have the right to request a copy of the information that we hold on you.”*

FH&E have formally confirmed in writing that Cambridgeshire County Council will be provided access to data as required by the grants terms etc. including for the purpose of verifying the membership process and to enable any future membership surveys or other contact with members to be overseen by the Council. It was confirmed that Internal Audit officers had been given access to all the data requested.

FH&E have advised that the above is compliant with GDPR requirements.

The Cambridgeshire County Council (CCC) Information Governance Team had advised that under the grant agreement there was a lawful basis for FH&E to share data with the Council, but the above due to its lack of transparency constituted a breach of the first principle of GDPR. The Teams' advice was that in order to ensure compliance with GDPR, FH&E should inform all members of the data sharing planned with the County Council.

Discussions with FH&E highlighted that in order to avoid having to undertake a further costly mail-out, FH&E proposed to address the issue by issuing their members with a privacy notice giving details of the data sharing and the organisation's relationship with the Council, when they next used the Dial A Ride service.

This solution means that the information will not be received by all members at the same time. The Committee was therefore asked to consider whether FH&E's proposed solution was acceptable or whether the Council should require FH&E to undertake a second mail-out to all its members.

Questions / issues raised in the debate included:

- How many members were involved? In reply approximately 1500 for which a post out to all of them could have a cost implication in the region of £1000.
- Internal Audit clarifying that FH&E had provided a written assurance that they would provide full member data details and as already indicated had given them all requested access.

As there were strong views expressed by members of the Committee both ways, (with some supporting the compromise suggested on cost grounds and as FH&E had only recently carried out a full post out, while other members supported a full post out to meet the requirements of the grant agreement), there was a vote on whether FH&E should write to all their members. Having received three votes in favour and three against the proposal was carried on the casting vote of the Chairman and,

It was resolved:

To require FH&E to send a letter to all members informing them that their data would be shared with the County Council for the purpose of monitoring the service provided.

3. Community Transport/Commercial Vehicle Fleets

The third issue was an information update with no decision required and followed a query regarding whether or not the FH&E charitable Community Transport organisations were sharing vehicles with the commercial arms of the operation and, if so, whether this was legal.

As the vehicles were assets, they were required to be reported in the accounts of one organisation only, who were then recognised as the owners. Individual vehicles were operated under the terms of a Public Service Vehicle license and / or a Section 19/22 permit. Internal Audit confirmed that all vehicles were owned by the charitable arms of each entity (the Fenland Association for Community Transport Industrial and Provident Society, and the Huntingdonshire and Ely and Soham Associations for Community Transport Charitable Independent Organisations) and were hired out to the commercial organisations, with a charge made for use. The County Council

was continuing to seek assurance from the Traffic Commissioner on this arrangement.

In discussion issues raised included:

- What were the charges and whether they were considered to be a reasonable commercial charge? Officers agreed to obtain this information and circulate it to Committee members. **Action: Internal Audit.**
- When was it likely that the Traffic Commissioner would provide a ruling? As currently no view had been forthcoming, officers would undertake further follow up. **Action: Executive Director Place and Economy / Assistant Director Cultural and Community Services** Officers agreed to pursue this action with the Traffic Commissioners.

Before final consideration of the report recommendations, the Chairman provided the opportunity for the Committee to review the Action Plan actions set out in the appendix for any comments.

Issues raised included:

- Action 5 – ‘FH and E to reconsider composition of Board to ensure it is capable of fulfilling stewardship requirements in the future’. As an oral update it was reported that the minutes of the 15th October meeting of the Board for sign off of the new revised arrangements had been received by Internal Audit and so this action had been completed. This would be confirmed in the next update report.
- Action 9 – ‘The Chief Executive, Deputy Monitoring Officer and Chief Internal Auditor will consider information and evidence provided by FH&E and judge whether they pass the criteria for a “fit and proper” person to contract with’ -this was also expected to be completed shortly. The point was made that the Deputy Monitoring Officer was now the Monitoring Officer as a result of the recent decision of Staffing and Appeals Committee.
- Action 16 – ‘FH&E must have systems in place to enable reporting on membership, eligibility checks, demand and income’ – the text would require updating in its next iteration following the decision of the Committee earlier in the meeting.
- Action 19 – ‘All FH&E contracts to be re-tendered’. – A member sought clarification of the final sentence on the update column reading “Review of these documents has identified a concern with the quality of some of the contractual documentation, which needs to be resolved”. It was clarified that this was the concern of the Chairman in relation to the large number of grammatical errors he had found in one of the documents provided to him. His concern was, as a legal document, whether it was fit for purpose. He had provided his comments on the draft but his concern going forward was with other legal documents that he had not seen and whether the relevant Committees should see sight of contracts within their remit for sign off and agreement. The Section

151 Officer who was also the Deputy Chief Executive explained that the vast majority of contracts agreed were Executive decisions taken by officers and to change procedures to require them to come to the relevant committee would have huge resource implication in terms of member time and for the Committee meetings themselves. The volume of work needed to be proportionate to the risks involved. **Action: The Chief Finance Officer Chris Malyon undertook to review a random selection of legal documents and provide a short update report to a future Audit and Accounts Committee on the findings.**

- Action 29 – ‘Confirm Citroen loaned to FH&E had been returned’ – Councillor Kavanagh asked whether the van had been returned and the condition it was in, while also expressing surprise that it had been loaned in the first place. The Chairman undertook to pass to him the document he had on the subject. **Action: Councillor Shellens**
- Action 30 – ‘Any money to be reclaimed in respect of State Aid or otherwise would be so’ - As an update the draft report from PKF had been reviewed by management who had asked for further work to be undertaken on whether inappropriate funding had taken place. The Chairman expressed his concerns regarding the length of time taken by the consultants on this issue and asked when a final report would be available. In reply there was the expectation that this would be by the end of November. **There was a request that there should be a verbal update on progress on this item at the 22nd November meeting when agreeing the minutes. Action: Chief Internal Auditor.**
- Action 38 – ‘Additional Staff to be employed to enforce the grant conditions by end of November at the latest’ – as an oral update it was reported that a new member of staff was starting in the following week.
- Action 40 – ‘External Officer to investigate where the issue with Freedom of Information requests originated’ - The report would be available for the November Audit and Accounts Committee
- Action 55 – ‘Chief Executive to meet with FH&E’ – this needed updating, including whether there were to be any further meetings planned with taxi drivers.
- Action 65 – ‘Transfer of payments to PKF from Milton Keynes Council to the Cambridgeshire financial system would take place’ - this transfer was due to take place within the next two months with work already well advanced being overseen by the Deputy Section 151 Officer.

The Chairman in summing up recognised that many things that were previously wrong had now been put right as evidenced in the appendix action responses and that going forward, there was good will and determination to ensure that contracts would be undertaken in a correct and appropriate manner.

Two members of the Committee had still not seen evidence to prove that European Union (EU) state aid regulations had not been breached or that the Committee could guarantee that there would be a clear separation between the community and commercial arms of FH&E, with one Member suggesting that there was still a huge element of trust required on how contracts were being let elsewhere. In response, the Chief Internal Auditor highlighted that nearly everything that had been asked for from officers and from FH&E had been provided within the timescales requested at the last meeting. It was also highlighted that the Committee requested an interim update within three months (i.e, this meeting) recognising that some issues would take longer e.g. State Aid and public funding issues. In respect of Council contracts, nothing was taken on trust and Internal Audit undertook a great deal of work regarding the overall County Council contract environment, accounting structures and work on assurance and control.

Having taken a vote on the main report recommendations with four members in favour and two against,

It was resolved:

- a) to note the progress with implementation.**
- b) That having been invited to express its views, to agree that the actions in the Action Plan were still considered appropriate, proportionate, and sufficient, and that FH&E (the single board overseeing Fenland Association of Community Transport (FACT), Huntingdonshire Association for Community Transport (HACT) and Ely and Soham Association of Community Transport (ESACT)) following the implementation of all actions, would be considered a fit and proper organisation to contract with the Council.**
- c) The Committee having been requested to consider the issues raised at 3.1.6 and 3.2.8. agreed resolutions as set out in the minute namely:**
 - That full checks should be required for all new members retaining documentary proof of said checks, along with spot checks being undertaken on members to ensure continued compliance.**
 - To require FH&E to send a letter to all members informing them that their data would be shared with the County Council for the purpose of monitoring the service provided.**

**Chairman 22nd
November 2018**