

**AUDIT AND ACCOUNTS COMMITTEE MEETING 31 OCTOBER, 2018**  
**PUBLIC QUESTIONS / STATEMENTS AND OFFICER RESPONSES REPORTED**  
**ORALLY AT THE MEETING**

**1. QUESTION FROM CAROLE MANSELL, C & G COACH SERVICES, CHATTERIS**

Our understanding following the July A & A Committee public meeting was that no new commercial school contracts would be awarded to FACT until after they have satisfied the Committee's full enquiry.

**Officer Response:** That is correct, and no new contracts were awarded to FHE until our Chief Executive and Chief Internal Auditor were satisfied that sufficient progress had been made with the actions discussed at the 31 July meeting of this Committee. This point was reached in August, when Gillian and Duncan held a meeting with Dave Humphreys and other members of the CTCA to inform them that the Council had taken the decision that it would be awarding contracts to FHE.

The September 3 Cromwell College contracts were awarded to Fenland ACT Trading which we were in line to gain, having been contacted regarding our bid and possible acceptance by the Council after a successful tender in early July. The award process, however, was extended to accommodate Fact's dubious position pending the July A & A Committee public meeting.

**Officer Response:** FACT were the lowest bidder for these 3 contracts. All bidders were informed, through Intention to Award letters issued on 20 July, that the award of these contracts was 'on hold'. This was because at that time staff had not been authorised to contract with FHE as the Council was still in the process of judging whether FHE were a fit organisation to contract with (there was also no lawful reason to exclude FHE from the procurement process). Staff had previously contacted C&G Coach Services as the second lowest bidder to enquire whether they would be able to deliver the contract if required. No undertaking to actually award the contract was made at that time. Intention to Award letters for those contracts 'on hold' were issued on 17 August, following the decision reached by Gillian / Duncan, which I have already mentioned.

Fact even informed their drivers at the term end that they were not undertaking these contracts - and we had applications from their drivers – one of which we have employed, being the only one with a PCV driving licence, which is necessary for the operation of these contracts.

**Officer response:** There was no communication between the transport team and FHE during this time - that would not have been appropriate - so it is quite possible FHE thought they would not be delivering those contracts.

Fact quoted such a low price, using what we believe to be some non-PCV drivers – some of the same drivers whose application to us was disregarded because of lack of correct driving qualifications. Whilst they may have category D on their licences

they also had 101 on section 12, which only enables them to drive minibuses for non-commercial operations.

**Officer response:** There are a number of reasons why different operators are able to put in lower bids for certain contracts – often because they are already operating in a particular geographical area, or in relation to their driver pay rates, overheads and profit margin. It is worth noting that FHE have also been outbid on 46 of our contracts. All of our previous contracts with FHE have now been re-tendered. Our commercial contracts require all drivers to have the correct licences for the types of vehicles they are using and we have stipulated that this must be on O licence or taxi licence; FHE have agreed to these conditions like all our other operators. These new contracts came into effect from the beginning of September. It is possible that ex-FACT employees did not have full PSV licences as they were previously able to operate under a permit 19/s22 licence.

We wrote to Mrs Beasley and the Committee Chairman expressing our dissatisfaction with these commercial awards and we do not accept the explanation that the Council had no choice as this Company correctly tendered and was the cheapest. We also do not accept the further explanation that the tendered prices were comparable with other routes as these routes involve high mileage and are, therefore, not comparable. The contracted prices barely cover a qualified PCV driver's wage and they are only possible because they are subsidised by the drivers going onto publicly funded community transport work on a daily basis.

**Officer Response:** It is up to each operator to determine how they construct their tender price and we cannot comment on this; however as previously mentioned there are a range of reasons why operators are able to offer lower prices. It is up to each operator to determine their rate of pay.

Fact are still utilising publicly-funded vehicles which apparently the Council say are individually difficult to identify but as almost all Fact vehicles are being used on both subsidised community transport and commercial services we feel this is irrelevant.

**Officer response:** The Council has investigated this issue and it appears to be lawful as well as common practice elsewhere for vehicles to be used for both commercial services and subsidised community transport. The accepted process for ensuring this does not constitute a cross-subsidy is for the vehicles to be owned by the charitable company and hired out to the commercial company at a commercial rate. The Council has contacted the Traffic Commissioner for confirmation of this position, and we are yet to receive their response, however we understand that the Traffic Commissioner is known to take any reported breaches very seriously and have themselves sought evidence elsewhere of such hire payments being made correctly, which implies this system is allowed. We have been assured by FHE that this is the system they are now operating and we will be checking this as part of the regular financial monitoring we are carrying out with our community transport providers as part of our new Grant Monitoring Framework.

How can we fairly compete! Such cross-subsidisation was agreed by this Committee as grossly unfair and identified by the auditors as contrary to EU grant regulations. We are considering contacting the EU Commission about misuse of public funds, but

have decided to await the conclusion of this Committee's investigations which I still put faith in to be fair in all respects and to at least ensure a level playing field.

**Officer response:** The new processes and procedures which the Council has put in place, including the requirement for separate commercial arms of FHE and our grant monitoring framework, have been designed to ensure that in future there will be no cross-subsidisation using public funds. The Council is investigating the state aid and cross-subsidisation issue further as part of the action plan which will be discussed later in the meeting.

## **2. QUESTION FROM JODY DAY, TRAFFIC MANAGER, C & G COACH SERVICES.**

We and other operators have witnessed vehicles displaying Permit 19s and not PSV O Licences, on the Cromwell College school contracts.

**Officer response:** We are grateful that these incidents have been brought to our attention, and agree that this should not be happening. This issue has been raised with FHE who have assured us their drivers are required to swap over permits / licences as appropriate to the use of the vehicle at the time, and we are continuing to monitor this as part of our monitoring framework.

We also believe that non-pcv holding drivers are being utilised at times. Why is this tolerated and can we have assurances that random checks will be regularly made on the correct commercial operation of these contracts to ensure that both vehicles and drivers are correctly licenced?

**Officer Response:** We would be grateful for any specific examples that operators are able to provide where they have evidence of wrong doing or activity that may be in breach of a PSV licence. The individual or organisation also has a responsibility to report these issues to the Traffic Commissioner directly. We are carrying out random, unannounced spot checks on our operators covering a range of vehicle and driver checks, and working with the DVSA to check on driver licensing.

We would also like reassurance that the Traffic Commissioner will be involved in these investigations and that the Council's passenger transport inspectors are completely aware of exactly what type of both operating licence and driving licence is required for commercial school contract work?

**Officer Response:** As noted above we are in touch with the Traffic Commissioner and working closely with the DVSA. We can confirm that our Transport Officers are aware of the vehicle and driver licensing requirements for our commercial contracts.