

Minutes of the meeting of Audit and governance committee held at Council Chamber, Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Tuesday 24 September 2019 at 10.00 am

Present: Councillor Nigel Shaw (chairperson)
Councillor Christy Bolderson (vice-chairperson)

Councillors: Dave Boulter, Bob Matthews, Diana Toynbee and Yolande Watson

Officers: Andrew Lovegrove, Steve Burgess, Alistair Neill, Natalia Silver and Claire Ward

382. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Peter Jinman.

383. NAMED SUBSTITUTES (IF ANY)

Cllr John Hardwick attended the meeting as a substitute member for Cllr Peter Jinman.

384. DECLARATIONS OF INTEREST

There were no declarations of interests.

385. MINUTES

RESOLVED:

That the minutes of the meeting held on 30 July 2019 be confirmed as a correct record and signed by the chairman.

386. QUESTIONS FROM MEMBERS OF THE PUBLIC (Pages 7 - 10)

Questions received and responses given are attached as appendix 1 to the minutes.

387. QUESTIONS FROM COUNCILLORS

There were no questions from councillors.

388. ANNUAL REPORT ON CODE OF CONDUCT

The monitoring officer presented the report and welcomed two independent persons who were in attendance, Jake Bharier and Gerry Hodson, to answer any queries which the committee may have.

During the discussion on the report, the following points were made:

- The overall number of complaints had reduced in the year
- Code of conduct training had been well received and there were future training sessions in place.

- The standards panel had given assurances of the process in place.
- There had been no appeals received in the period covered by the report.
- The Committee on Standards Life had produced best practice recommendations and Herefordshire had already implemented most of these.
- There were further recommendations to amend the arrangements for dealing with code of conduct complaints attached to the report.
- Herefordshire was no different to any other council as the issues were the same.
- The mechanism for supporting members subject to complaints would be discussed with the independent persons.
- The monitoring officer had a delegation from council in respect of certain types of dispensation. The main reason why dispensations were granted was when ward members lived in the ward they represented and needed to represent their ward residents' views.
- Any challenges to a dispensation granted by the monitoring officer would be heard by the audit and governance committee.
- The government had not yet responded to the recommendations outlined in the committee for standards in public lives report.

RESOLVED

That

- (a) the recommendations from the standards panel advising this committee, following their annual sampling exercise, are approved; and**
- (b) the committee endorse the recommended changes to the standards complaints process proposed by the monitoring officer in consideration of the review by the committee on standards in public life, set out in appendices 1 and 2.**

389. PROGRESS REPORT ON 2019/20 INTERNAL AUDIT PLAN

The head of internal audit presented the report and highlighted the following:

- Six audits had been completed since the last update.
- Two audits were at draft stage
- Six audits were in progress.
- One audit had been deferred to a later date at the request of the client.
- A special investigation in quarter 1 had been completed.
- There were no high corporate risks identified in the audits.

Three audits had priority 2 findings and details of these, together with timescales, were contained on pages 65 to 77 of the agenda pack.

Contract management audit

The contract management audit was partial and had three priority 2 findings. Three contracts had been audited. Two were well managed but there had been findings in respect of the mainstream passenger transport contract.

Following a query from a member of the committee, it was confirmed 2 officers asked do not use the contracts management tool kit and use localised arrangements to contract manage. The assistant director confirmed that the contract procedure rules form part of the constitution that all directorates follow and the toolkit was available to officers to use but needed updating. The resourcing of the commercial team was being looked at and the target date for updating the toolkit and other actions was 30 April 2020.

The head of transport and access services confirmed that a compliance officer had been recruited and this has provided dedicated resource for developing contract management processes, monitoring and documentation. The monitoring programme has been developed to monitor over 40 transport providers delivering over 200 passenger transport contracts.

It was noted that onsite contract compliance checks would take place without advance notice and that the programme will be target where there are concerns relating to specific providers following an intelligence led approach.

South Wye Transport Package (SWTP) Phase 1 – Governance

The internal audit in respect of the SWTP had looked at the procurement of the Southern Link Road (SLR) which had four priority 2 findings. The findings had been in connection with the procurement process and the recording and documentation of the actions of officers during the process.

A member of the committee noted that in the audit plan for 2018/19 there was an audit in connection with the effectiveness of major projects which had been reasonable and there had been no priority 2 recommendations and sought clarification of the interlinkage of the two audits given the findings in the SLR phase 1 audit. The head of internal audit confirmed that there were interlinkages and that the audit into the effectiveness of major projects had had a wider scope and the SLR phase 1 audit had looked at one particular area. There had been priority 3 recommendations in the effectiveness of major projects which were not reported to the committee.

A member of the committee noted that in the Blue School House follow up report, recommendation 7 had been marked as in progress and recommendation 8 had been marked as complete. The head of internal audit reported that the follow up audit of Blue School House would have looked at a number of different contracts to see if they were complying and those samples were compliant.

A member of the committee stated that weakness in the major project processes had been reported since 2015. It was noted that internal audit had made recommendation in connection with major projects which had been accepted by management. It was management's responsibility to undertake the recommendations by the agreed timescales. Internal audit will highlight where controls are not in place and report back to the committee as it was responsible for oversight.

A member of the committee drew parallels in connection with the lack of minutes and decision recording with those found in the Ofsted inspection into children's safeguarding. The chief executive commented that this was a valid point. He indicated that some areas relax the administrative processes when there were timing pressures, e.g. contract complexity. Reminders about the need to record were powerful and important. It was also stated that as a consequence of the audit, a meeting of the senior management team was being arranged to ensure that the messages were enforced. It was acknowledged that there were weaknesses in some areas. He believed that the committee could be reassured that the introduction of the Verto project management software system in effect prevented individuals in the procurement process from having the ability to overlook some of the decision making processes.

It was noted that the public interest would be why the significant investment in project management processes and documentation had not really prevented these issues occurring. The chief executive stated that he was keen to have a system in place which was good for project management but was also a tool for communication with councillors as to the progress and process of the decision making required. When this

system was introduced, it had been noted that there would be a need to culture change and there had been a significant amount of training provided to staff. It was noted that if individual officers do not record something, no system is going to identify that something has not happened except the officers and those involved in the discussions. Officers needed to understand that the recording of information is very important for transparency.

The chief executive reported that he was in the progress of organising a follow up to the corporate peer review which was the most substantial the Local Government Association (LGA) offered and this area could be considered. It was noted that the committee do have concerns about project management and how it is managed and further internal audit work and a peer review could be sought to look at these areas to try and resolve issues.

With regard to the alternative procurement assessment, it was confirmed that officers undertaken this and the chief finance officer confirmed that the ones he had seen were compliant with the contract procedure rules. Consideration may be needed to including this in the internal audit plan.

RESOLVED

That

- (a) That the possibility of more internal audit work centring around the contract procedure rules be considered; and**
- (b) A peer review is undertaken to see what best practice looks like in other authorities.**

390. EXTERNAL AUDITORS REPORT

Grant Thornton presented the report.

It was noted that an unqualified value for money audit opinion had now been issued following further work performed on significant risks. Details of this work was detailed on pages 110 to 112 of the agenda pack.

It was noted that the second significant risk had been in relation to the South Link Road procurement project relating to the procurement of a contractor. The contract in respect of this procurement had not been awarded. Grant Thornton were recommending that there was a review of the governance processes for capital projects.

Grant Thornton explained that for the value for money opinion, they looked at all the circumstances that could have arisen had the procurement process had concluded. As the contract had not been let, there was no loss to the council. This was the reason why the value for money was unqualified.

Following a query from a member of the committee, the chief executive explained outcomes of the peer review are available to councillors and members of the public. The chief executive agreed to prepare a summary of how peer reviews work and how council engages them.

Following a query from a member of the committee, it was explained that Hoople was a contractor to the council and the services it carries out on the council's behalf. The work

is carries out on behalf of the council is audited as part of the internal audit plan and the committee can seek assurance from the internal audits.

Hoople is majority owned by the council. The organisation has its own board and a council office sites on the board. A concern was raised that the committee are less able to give an assurance on the financial probity or risks within Hoople as it did not review the accounts. It was noted that this was a challenge, but group accounts are now included within the statement of accounts. This sets out more clearly the relationship with Hoople and how that relationship works. It was noted that when the annual governance statement was presented to the committee for review, they could consider whether that provided any assurance with regard to Hoople. It was noted that Hoople was a Teckal company which can benefit from other work which are commissioned by the council without going through a tendering process. This enables Hoople to provide services to other companies which Hoople does do.

It was noted that an update on tracking of external audit recommendations would be presented to the meeting of the committee to be held on 19 November 2019.

Grant Thornton confirmed that they were still not in a position to issue a completion certificate for the 2016/17 accounts. Progress was being made on the confidential outstanding matters.

RESOLVED

That the report be noted.

391. 2018/19 ADDITIONAL EXTERNAL AUDIT FEE

The chief finance officer presented the report.

It was noted that the external audit fees were nationally set fixed rates.

RESOLVED

That the additional external audit fee be noted.

392. NMITE PROGRESS REPORT

The chief finance officer presented the report.

The following points were raised as part of the discussion of the item:

- The Department for Education (DfE) had confirmed that they had received the internal audit report from SWAP and that they were satisfied with the contents.
- The DfE had confirmed that the council had discharged its duties in respect of acting as an accountable body.
- The email from the DfE indicating that they were satisfied that all the arrangements were in place and that they will not be recalling any of funding would be all the confirmation received by the council.

The committee agreed that this item would be listed as an agenda item in November as there was continuing public interest and a reputational risk for the council.

RESOLVED

That

- (a) **The report be noted; and**
- (b) **A further report be brought back to the meeting of the committee to be held on 19 November 2019.**

393. ENERGY FROM WASTE (EFW) LOAN UPDATE

The chief finance officer presented the reported and noted that the committee's function was to comment on the assurance provided in connection with the loan agreement. The operation of the waste contract would be considered that other parts of the council.

The council had lent money to the enterprise and the report outlines the detail of the loan. The current status of the loan was satisfactory and this was a good outcome. If there were any issues with the loan, it would be reported to the committee as quickly as possible.

The loan arrangement ended in 2023 and there would options available to the council for any future arrangements which included a third party buys out the loan, an extension with the current provider or brought in house.

It was noted that appendix 3 (ratio calculation) did not provide an indication of that it meant. It was requested that an explanation be built into next year's report or that it is removed.

With regard to the Fitchner report (appendix 4) it was noted that there were defects had not been resolved and the chief finance officer stated that it would be looked into and an update would be circulated to committee members.

It was noted that in the accounts it had been indicated that there was interest from the loan of £600k which had not been accrued. It was confirmed that payments had been received in line with the loan agreement but had not been accounted for in the accounts.

It was noted that the risks A and F were the same risks as the previous year and the chief finance officer confirmed that he would check the risks between A and F and update the committee. It was further confirmed that the risk register was jointly produced and monitored with Worcestershire County Council.

It was noted that when any financing arrangement came back to committee, they would require professional advice. The chief finance officer confirmed that professional advisers would be engaged to advise the council and the committee.

RESOLVED

That the report be noted.

394. WORK PROGRAMME UPDATE

The committee's updated work programme was presented. It was noted that a report on NmiTE would be added to the agenda for the November meeting.

RESOLVED

That subject to the amendment above, the updated work programme be agreed.

The meeting ended at 12:05 pm

Chairperson

APPENDIX 1

**PUBLIC QUESTIONS AND ANSWERS TO
AUDIT AND GOVERNANCE COMMITTEE
24 SEPTEMBER 2019**

Question 1

Dr N Geeson, Hereford

For the July meeting of Audit and Governance I asked a Question on the risk that local taxpayers may have to refund money paid by the Department for Education to NMiTE, for which the Council acts as guarantor. The Response assured me “there is no risk”. However, in para 19 of the latest NMiTE Progress Report we read: “Ultimately the DfE could require the council to repay the grant funding that it has received and which has been paid to NMiTE ... The Department for Education is satisfied therefore the risk is currently nil.” Writing that “the risk is currently nil” is clearly not the same as saying “there is no risk” ever. As the two statements contradict one another, please can you confirm which one is correct?

Response

The Council’s role as accountable body is to ensure that funds provided by the Department of Education are spent in accordance with the Department of Education’s instructions. Since the meeting in July officers have received confirmation from the Department of Education that they are content that the monies have been spent in accordance with their wishes and they are not seeking to recover funds. This is confirmation that there is no risk of the council having to repay funds to the Department of Education.

Supplementary Question

Will NMiTE be receiving further funding from the Department for Education for which Herefordshire Council will continue to act as guarantor and incur potential risk?

Response

Yes, the Department for Education are intending to make a further advance of approximately £5m to NMiTE probably in March next year subject to NMiTE meeting various milestones that the DfE will put in place. If that happens, then the arrangement is that this council will continue to be the accountable body for that further money.

Question 2

Mrs E Morawiecka, Breinton

The South Wye Transport Package (SWTP) work to date has incurred costs in excess of the EU public procurement rules for public tendering and the work does not fall ordinarily within the scope of the BBLP Public Realm Service contract 2013.

As defined by the BBLP Public Realm contract (page 8) this transport package appears to meet the criteria of a “Major Scheme” unless the “employer” (using his absolute discretion) decides otherwise.

Given the above, what is the mechanism that determines that the SWTP is a “Major Project” rather than a “Major Scheme”, and so exempt from any competitive, public tender process?”

Response

The SWTP has not been exempted from competitive public tender processes. The Southern Link Road scheme is the subject of an OJEU competitive tender which commenced in 2018 although no decision has been taken to award the contract whilst the scheme is being reviewed.

The SWTP project management and design functions provided by BBLP are services which are within scope of defined services of the Public Realm Service Delivery contract and these services were therefore commissioned using this contract. It should be noted that the public realm contract was awarded to BBLP following an OJEU competitive tendering process in 2012/2013.

Supplementary Question

I am surprised that the reason why no contractor has been appointed is claimed to be due to the scheme being currently reviewed when I understand that the pause and review cannot happen is because the call in has happened . From page 12 of the SWAP report it is apparent that the tender process started in May 2018 but the issue identified in July 2018 was not recorded in the project control group minutes until January 2019 – 6 months later. SWAP say on page 16 there is a risk that the council cannot demonstrate good governance around the decision to continue with the tender process for the Southern Link Road. Has a contractor been identified through the flawed tender process purely on the quality basis or will the tender process be re-run once good governance and the SWAP recommendations have been implemented after 29 November 2019 and in view of the issues identified are Balfour Beatty Living Places the best people to run this process?

Supplementary Answer

There will not be a decision on the procurement or any award of contract until the cabinet member has made a decision on whether there is going to a pause and review but the matters you have raised will be taken into account. The tender process has been on hold since the change of administration.

Question 3

R Palgrave, Hereford

Following a query from a member of the committee, it was confirmed that SWAP would be looking at the Southern Link Road capital programme as part of the review of the Blue School House recommendations which was due to be reported to the March 2019 committee meeting. This would check whether the recommendations from Blue School House were being implemented in other capital projects” When will this committee receive assurance that the Blue School House recommendations have been implemented on the transport capital projects, which to date have cost the local rate payers over £10million?

Response

The recommendations of the Blueschool House review are being followed in relation to all the major transport projects. Major transport projects are managed using the council’s project

management system Verto and overseen by a Major Infrastructure Delivery Board. The SWAP audit programme for 2019/2020 includes an audit of the SWTP scheme.

Question 4

Ms K Sharp, Hereford

After the 2017 report on the Blue School House spending fiasco the Chief Executive of Herefordshire Council apologised unreservedly and said he had accepted all the audit recommendations.

In the light of the latest internal audit report, on the poor governance on the South Wye Transport Project, will the Chief Executive be explaining to this committee and the Council why he has failed to ensure that all the recommendations he accepted 2 years ago, have not been implemented?

Response

Finding 3 of the SWAP audit report refers to one operational decision on the SWTP project taken in July 2018 and indicates that the audit team could not find a documented record of that operational decision. They recommend that guidance is provided to officers in relation to documenting / recording of future operational decisions and this recommendation has been accepted with a date of 29 November 2019 to action. It does not state that the recommendations of the Blue School house review have not been implemented. The council is committed to ensuring that improvements are made and appropriate learning is done, where they are needed in operational management, in this case in delivering capital projects.

Question 5

Ms J Richards, Hereford

Following a query from a member of the committee, it was confirmed that SWAP would be looking at the Southern Link Road capitol programme as part of the review of the Blue School House recommendations which was due to be reported to the March 2019 committee meeting. This would check weather the recommendations from Blue School House were being implemented in other capitol projects” When will this committee receive assurance that the Blue School House recommendations have been implemented on the transport capitol projects, which to date have cost the taxpayer over £10million

Response

I refer to the response already given to this question (see question 3 above).

Question 6

Mrs Wegg-Prosser, Breinton

Re the long-delayed latest audit of SWTP, the Internal Audit Plan Progress 2019/20 Report to today's meeting states (p.16 Finding 3):- 'There is a risk that the Council cannot demonstrate good governance around the decision to continue with the tender process for the SLR', yet the Report fails to provide an internal audit report on spend against budget for this SWTP Major Scheme. Without an internal audit report on spend against budget, how can this Committee be assured that the £4million spent on professional fees against the

budget of £750,000 is not an indication of overspends in other budget lines, rather than an isolated overspend?

Response

Finding 3 of the SWAP audit report refers to an operational decision taken in July 2018 and indicates that the audit team could not find a documented record of that operational decision. They recommend that guidance is provided to officers in relation to documenting / recording of future operational decisions and this recommendation has been accepted with a date of 29 November 2019 to action. The audit scope did not include a review of budget management.

Monitoring of budget, spend and forecasts are monitored as part of the project management of the programme as well as being reported to cabinet. The scheme is managed using the councils Verto system and the current forecast project cost remains within the £35m budget set in 2014 SOBC. In addition, each project decision taken and project decision report published contains a summary of scheme budget and cost forecasts.

The £4m figure referred to is not recognised. The Strategic Outline Business Case (SOBC) dated 2014 for the South Wye Transport Package (SWTP) scheme published on the council's website, sets out the estimated cost for the SWTP. I understand that the figure of £781k, to which you refer in your question, is not from the 2014 SOBC document. The figure you mention is contained within an Amey 2010 report and I am advised that it is not correct to suggest that this 2010 figure represents the current approved budget for SWTP fees.