

MINUTES of the meeting of Audit and Governance Committee held at Committee Room 1, Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Tuesday 24 November 2015 at 10.00 am

Present: Councillor BA Durkin (Chairman)
Councillor FM Norman (Vice Chairman)

Councillors: DG Harlow, EPJ Harvey, PD Newman OBE, RJ Phillips, LC Tawn and MT McEvelly

Officers: Josie Rushgrove, Claire Ward, Jacqui Gooding (SWAP), Paula Gibson (SWAP)
Terry Tobin (Grant Thornton), Phil Jones (Grant Thornton), Steve Hodges

87. APOLOGIES FOR ABSENCE

Apologies were received from Councillors J Stone and ACR Chappell and Peter Robinson, director of resources.

88. NAMED SUBSTITUTES (IF ANY)

In accordance with paragraph 4.1.23 of the council's constitution, Cllr MT McEvelly attended the meeting as a substitute member for Cllr J Stone.

89. DECLARATIONS OF INTEREST

None.

90. CHAIRMAN'S ANNOUNCEMENTS

The chairman and the vice-chairman attended training hosted by SWAP in October. The slides had been circulated to committee members and it was hoped that these were informative. Further training provision would be welcomed.

91. MINUTES

The minutes of the meeting held on 24 September 2015 were agreed as a correct record.

92. ANNUAL AUDIT LETTER

It was noted that this was to be the last meeting to be attended by Terry Tobin (Grant Thornton). Thanks were given for his hard work for the council.

With reference to the audit findings report presented earlier this year, Grant Thornton reported positively on the accounts which were of good quality, completed earlier and with no adjusted errors. An unqualified opinion on the statement of accounts was provided.

The key points of the report were:

- significant improvements in children's safeguarding;
- robust corporate strategy;
- delivery on over all savings targets; and

- sound financial reporting.

An overspend in Children's Wellbeing was reported although it was noted that Ofsted had lifted the improvement notice and the overspend was due in part to placement costs for looked after children.

Spending in Adults and Wellbeing was reported to be under control.

A Member noted the positive report and observed that risks in adult care remained high. He further commented on the valuation of property in the context of upgrading school buildings with a risk of losing the asset if a school then has academy status. Concern was that value of assets may be misrepresented in such cases where the council did not have full ownership.

The vice-chairman added that ownership of assets was not always clear and there were instances where developments went unchallenged as a result.

Assurance was sought that the council was doing all it could around safeguarding and that value for money was achieved in areas such as agency expenditure. It was confirmed that there are arrangements in place to reduce reliance on agency staff and recruitment of directly employed staff was being addressed.

The chairman thanked Grant Thornton for the favourable report and complimented officers on the work achieved.

Attention was drawn to an update circulated to members from Grant Thornton containing reference to literature and resources on business development, devolution and health and wellbeing, which would be provided separately.

RESOLVED

That the audit and governance committee discusses and takes note of the content of the annual audit letter for 2014/15.

93. INTERNAL AUDIT PLAN PROGRESS REPORT

Internal Auditors (SWAP) presented a progress report on the audit plan. There was specific reporting on audits in relation to the Buchanan Trust, the pothole fund and safer recruitment. No problems were found in regard to the Buchanan Trust or the pothole fund.

Some issues were highlighted in regard to safer recruitment where the primary focus was on Children's services. It was found that although there were good processes, with regard to volunteers, there was no record of those who had not had a DBS (Disclosure and Barring Service) check. It was acknowledged that this was not a significant issue across the council but it was necessary to have a list of all volunteers in all services in order to check those in need of a DBS check.

It was found that responsibility for ensuring DBS checks lay with services managers and there was a tendency to use casual workers rather than volunteers. Practices were benchmarked with other councils and it was found that other councils were doing more to track volunteers. It was therefore recommended the council tracks volunteers more closely to show that reasonable steps were being taken to ensure everyone is accounted for, and this was noted in terms of sound risk management.

Discussion took place regarding the feasibility and appropriateness of the portability of DBS checks between organisations as it was noted that repetitive paperwork could cause volunteers to disengage. It was noted that corporately, DBS checks are renewed on a 3-yearly cycle. Assurance was needed through service level agreements that partners had appropriate processes in place to manage checks for workers they engage.

In response to a Member's query regarding the reason for deferring the ICT audit, it was explained that auditors were asked to prioritise two additional pieces of work as detailed in the report. As previously requested by the committee, SWAP were formally requesting this deferral on the basis that it would be completed by the first quarter of 2016/17. The deferral was agreed.

RESOLVED

That subject to any comments the Committee wishes to make the report be noted.

94. CORPORATE RISK REGISTER

The ECC directorate services team leader presented the risk register and outlined its management process. Services had their own risk registers which were considered monthly and which informed the corporate risk register which was reported to the management board every quarter. Cabinet received a quarterly report on the overall corporate risk register. The register was subject to continuous monitoring and development and feedback from the committee was welcomed.

A member identified a significant and strategic risk to include on the register regarding the matter of onshore oil and gas extraction (fracking). It was reported that Esso was looking to seek approval for fracking in Kerne Bridge which is within the Wye Valley Area of Outstanding Natural Beauty (AONB) and the ground water protection zone. The member referred to a recent environment report highlighting risks of fracking e.g., from earthquakes and seismic activity. It was considered that there were geological implications and risks of earthquakes higher than magnitude 3 in this area. There were concerns that fracking posed a risk to tourism due to the cumulative effect of industrialisation of an iconic area which held a number of designations, therefore presenting significant strategic risk.

The committee was asked to consider a working group with officers to better understand the issues and to highlight the matter on the risk register. In the ensuing discussion on this matter the following points were raised:

- a working group needed clear terms of reference and balanced membership to look at the risks of fracking were it introduced, and would need to conclude findings as a priority;
- the planning system would control the application process but would give limited time to respond to an application;
- although the proposal was reduced in scale it remained significant and there has been a local and informed response from the ward. However, concern was that the council has not yet responded and could miss that opportunity to respond in regard to the wider impact on the county, resulting in approval for the scheme to go ahead. Examples seen elsewhere in the country such as in Lancashire suggest lengthy timescales for deliberation over applications;
- Distinction was needed between the risk register being a register of corporate risk rather than political risk. However the risk was regarded to be in relation to economic resilience which was a matter of corporate concern although the register needed to encompass wider ownership of risks in conjunction with partners

It was agreed that the member would hold discussions with the directorate services team leader to scope the need for either a working group or to add the matter to the risk register, and the committee reconvene in two weeks' time to consider.

Regarding matters currently on the risk register, a member raised a question regarding the impact of the deprivation of liberty (DOL) process. Recent press coverage highlighted that if someone died with a DOL order in place it required a coroner's inquiry

resulting in delays for families awaiting funerals. In the county there were demographic pressures which meant more of these order would be in place, placing families in additional distress and putting pressure on legal services.

SWAP confirmed that this area was covered by audit and that it should be possible to complete DOL inquiries within a day. No issues were raised in the audit and legal were not aware that this was an issue in Herefordshire, this will be reported on to the next committee meeting.

A member commented on European and other external funding, noting that it was critical that economic partnerships are understood. He further added that devolution was key to economic aspirations and was high on the government's agenda and so needed to be on the risk register in terms of economic resilience especially in relation to the local enterprise partnership.

It was noted that a number of items that did not show as having impact had stayed red on the register. It was clarified that the intention was to control accepted risk and ensure it was not increasing through mitigation, and so items remained on the register.

The chairman observed that some items appear to be unchanged in risk rating after controls were put in place. Demonstration of direction of travel would give a better indication of action having effect and the register would benefit from a review of its robustness.

A member added that there was no national standard for how risk registers work and suggest an operating procedure so that it be better understood. The current operating procedure which officers use would be circulated to members.

The chairman proposed an alternative recommendation to review the robustness of the document, remarking that the document needed to be reviewed to show that the measures working.

RESOLVED

That the corporate risk register be noted, and it be recommended that improvements be made to the robustness of risk management and make the corporate risk register a living document.

95. ENERGY FROM WASTE (EFW) LOAN UPDATE

The head of corporate finance presented a status update.

In brief, the drawdown of funds by Mercia was behind timescales due to a change in subcontractor as detailed in the report. Concerns were raised in July and actions taken to remedy by terminating the relationship with the subcontractor. There was also a report from technical advisors that timescales had fallen behind and there were no quality concerns. Mercia also had an excess in cash balances (£1m more than expected) and this was verified by Deloitte's.

The draw down was now expected to accelerate. The impact was that the council had not required to draw down loan funding. The current surplus was to increase due to the delays described but the increase was not considered to be material.

A member stated consideration to moving from the item in opposition to the scheme adding that the committee was not involved until late in the scheme and this was not satisfactory. She noted the reference to the issuing of warnings to contractors due to unsafe operations on site and that this was interpreted in reports as a positive that they were noticed and dealt with. She added concern that there were so many apparent infringements by contractors.

The chairman reminded members that whilst unsafe site practices needed to be addressed, the role was to focus on the report's recommendations regarding the loan update. A member commented that whilst deviation from a plan was a concern this was not an operational committee and noted that the financial effect was considered and not seen as material. The vice-chairman added that there was a need to follow the scheme closely as a whole as it was relevant to the committee and noticing the issues as they arise.

The head of corporate finance responded to a request for an explanation of final risk on the risk register regarding the security package. It was explained that there was mitigation action when loan agreement was made. Liquidated damages would be awarded from contractors HZI to Mercia. In the event of any default, there was a right to seize assets from Mercia. If the agreement were to be terminated the council had a 90% guarantee on return of the loan value. There are no indications that any of these circumstances will arise. There were safeguards in place and the conclusion was that the arrangements were working safely and there was no impact from the issue regarding HZI and Mercia. It was noted that there was one further subcontractor had been appointed since the report was published so the risk will reduce next time.

RESOLVED

THAT:

- a) **the risks to the council, as lender, are confirmed as being reasonable and appropriate having regard to the risks typically assumed by long term senior funders to waste projects in the United Kingdom and best banking practice; and**
- b) **arrangements for the administration of the loan are reviewed and, having regard to the advice of external advisors, confirmed as satisfactory.**

96. ANNUAL REPORT OF THE MONITORING OFFICER

The Monitoring Officer presented the annual report which was based on the work of the previous post holder.

A member commented on the reported reduction in the number of standards complaints about members. Discussion took place regarding concerns over the standards process, with the following key points raised:

- there were more complaints under the previous regime and current figures inferred that standards were improving but the process may not be effective, possibly due to changes in legislation which diluted powers to enforce resolution and so people were less inclined to raise complaints. The process needed to be robust;
- The loss of independent persons (IP) had implications for impartiality and decision-making of the one remaining as the subject was entitled to contact an IP for support during the process. Steps were being taken to address the number of IPs with consideration given to sharing this resource with other councils;
- the process needed urgent review and agreement by Council so that it was clearer and gave the right message to the public that complaints were followed through and action taken to resolve;
- there was concern regarding intimidation and bullying within town and parish councils which needed addressing with appropriate support for those affected and with the involvement of Herefordshire Association of Local Councils (HALC);
- a good councillor will be voted in but if they were disruptive it was not in the interest of the democratic process - councillors who were subjects of complaints needed opportunity to change through advice and training

The whistleblowing policy and procedure was recently agreed by the committee. However, a member raised concern regarding the intimidation of those whose anonymity was not maintained and were referred to the grievance procedure instead of the whistleblowing procedure. The member was aware of instances of staff who left as a direct result of treatment in relation to their concerns. The member asserted the gravity of this and highlighted that the policy needed to be robust and not be giving lip service to confidentiality. Concern was that the process was not safe for an individual as they did not get protection under PIDA (Public Interest Disclosure Act) provisions if they were referred to use the grievance procedure rather than the whistleblowing procedure.

In response, the following comments were raised by members:

- it was the responsibility of officers to implement and use the policy appropriately;
- since the committee did not have an operational remit, the monitoring officer would be controlling and overseeing whistleblowing activity from this point;
- in law, an individual would still have protection under PIDA in relation to whistleblowing regardless of the label given to their complaint;
- the committee could request a review of the new procedure if it were found to be faulty in practice.

A member observed that with regard to corporate governance and decisions made under the scheme of delegation, there was an increase in decisions not going to Cabinet. The same was noted in regard to the General Overview and Scrutiny Committee (GOSC) and there was concern regarding the functioning of the scrutiny process, which although politically balanced there seemed to be little engagement from the administration and lack of understanding of roles which weakened the scrutiny function. The member cited a recent example at GOSC where opposition members were commented on in relation to the number of questions raised. In the ensuing discussion, it was commented by members that:

- the level of members' engagement and depth of questioning needed attention;
- it was not appropriate for committee members to face ridicule or to inhibit their raising of issues;
- motions that were put forward by Cabinet were not always adopted so it was not the case that issues were being dismissed.

RESOLVED

That the annual report of the monitoring officer be reviewed and any areas for further work identified for inclusion in the work programme.

In addition, it was resolved that the committee oversees the review of the standards procedure via a working group. Membership of the working group was agreed as: Councillors EPJ Harvey, PD Newman and BA Durkin.

97. GOVERNANCE IMPROVEMENT WORKING GROUP UPDATE

The monitoring officer provided an update on the working group. The group had identified design principles for agreement by the committee to progress with the working group.

The chairman put forward a request that had been made by the Chairman of the Council to join the working group ex officio. The committee considered the request and concluded that this arrangement raised concerns over governance, and that it would be appropriate for the Chairman of the Council to engage as a consultee. It was noted that the constitution made no reference to the definition or purpose of ex officio membership and that working group members were expected to report back and consult with colleagues in their own group.

In confirming the committee's response, four members voted against the request and there were two abstentions.

In discussing the report and the role of the working group, a number of comments were made:

- the previous monitoring officer was tasked with identifying alternative governance models pre-election and this was included in background information to inform the working group;
- the working group was to look at ensuring the design principles were reflected in the current constitutional model;
- the original motion and background for this working group would be investigated and confirmed by officers.

A member referred to the decision making process in relation to delegated decisions, expressing concern that clarity was needed on the use of historical delegated decisions which allowed a continuum of decision making by officers without further reference to committees. Further concern was raised regarding the process which allowed decisions to be publicised without the visibility of the report that the decision will be based on until close to the decision being taken. Concern was that there was insufficient information or time to take part in the process in order to question or challenge. The monitoring officer related this to the third design principle and gave assurance that the group would look at best practice in detail. It was acknowledged that the working group needed to meet more frequently to take this work through to conclusion.

RESOLVED

That with reference to the outcomes to date of the governance improvement working group (as set out in the report and at appendix a) the draft design principles set out in appendix b be considered and approved.

98. WORK PROGRAMME UPDATE

Committee members were asked to consider any changes or additions to the work programme and to start to consider the preparation of the programme for 2016-17. The inclusion of training by SWAP for January 2016 was queried and this would be reviewed by officers to determine its inclusion.

A member asked about the reporting on development of an appraisal scheme for members which had been included in the work programme. It was confirmed that consideration of such was early in its inception and any developments would be reported on as part of the work programme in due course.

RESOLVED

That subject to any updates made by the committee, the updated work programme for 2015-16 for the Audit and Governance Committee be agreed.

The meeting ended at 12.40 pm

CHAIRMAN