

SUPPLEMENT TO THE AGENDA FOR

General Overview & Scrutiny Committee

Monday 10 March 2014

10.20 am

The Council Chamber, Brockington, 35 Hafod Road, Hereford

6. QUESTIONS FROM THE PUBLIC

To note questions received from the public and the items to which they relate.

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Questions from a Member of the Public to GOSC.

Responses and comments in red

Questions asked on 11.11.13:

The following questions have been received from Mrs E Morawiecka on agenda item 8, *Freedom of Information and Arm's Length Companies - An Update*

Question 1: Please see attached the letter from Director Geoff Hughes dated 13th February 2006, which gives the background to the setting up of Hereford Futures Ltd (formerly Edgar Street Grid (Hereford) Ltd) and how it is a Joint Venture Company between Herefordshire Council and Advantage West Midlands. Would you please detail Herefordshire Council's current and future liabilities, including that of local government pension, for any "arms length" companies, where the Council has provided guarantees for the company employees, such as the Chief Executive of Hereford Futures Ltd?

The Report to GOSC on 10 March 2014 addresses the council's current and future liabilities in relation to HFL, including in relation to the HFL CE's pension. The Chief Executive of HFL has advised officers that he does not expect the total liabilities of the company to exceed £525,000.

Question 2: The report on FOI and Hereford Futures Ltd, correctly states that Hereford Futures Ltd is a company limited by guarantee and that the guarantee provided by the members is limited to a specified sum, which in the case of Hereford Futures Ltd is just £1. Reference is made in the Notes to the Financial Statements for Hereford Futures Ltd for the Year Ended 31.3.11 that faced with a negative balance sheet, only Herefordshire Council guaranteed that it would provide income to Hereford Futures Ltd for the following year of £285,000 so that the auditors would be able to agree the company was a "Going Concern" for the year ended 31.3.12. Why would Herefordshire Council guarantee income more than £1 income to an "arms length" company which is effectively worthless and has accumulated net liabilities over its lifetime?

The report explains that the council made financial guarantees to HFL to ensure that the company continued to operate and is wound up in an orderly manner.

Question 3: Would the author of the report to the General Overview & Scrutiny Committee please confirm that the copy of the Local Investment Plan 2011-2026 (dated January 2011 - which is an agreement between Herefordshire Council and the Homes & Communities Agency) clearly states page 49 "The Company (HFL) has been established as a joint venture Company with Advantage West Midlands (AWM). AWM funding will come to an end from 31st March 2011. From 1st April 2011 the Company will be fully funded by Herefordshire Council."? (Please note a copy of this document has been supplied to the Monitoring Officer and the Chief Executive of Herefordshire Council 3 months earlier, and is attached* to help the author respond).

The report confirms that the LIP quote is, for all practical purposes, correct.

Question 4: According to the publicly filed accounts of Hereford Futures Ltd for the year ended **31st March 2012**, the company had a turnover of £485,594 and received grant income from Herefordshire Council of £513,067. Does this confirm that from 1st April 2011 Hereford Futures Ltd was wholly funded by Herefordshire Council?

The report so confirms.

Question 5: The report to the committee only considers accounts for the YE 31.3.11, despite having been provided with a copy of the accounts for the year ended 31st March 2012. What are the reasons for not providing Councillors of this committee with the most up to date, publicly available, financial information?

The report refers to the most up-to-date information that is publicly available, including the directors' statement for the year ending 31 March 2013.

Question 6: Hereford Futures Ltd website clearly stated on 12.1.12 (Please see screen shot attached) that "as well as taking all major decisions and setting policy, the Council chairs the Company's Gateway Committee" If this has been the role of Herefordshire Council why does it not possess any copies of Board meetings of this company, when sometimes up to 2 members of the Cabinet and the previous chief executive of the council, were in attendance at these Board Meetings?

The Report explains that no serving officers of the council are or have been directors of HFL; that the current Leader is no longer a director; and that, where Members are appointed as company directors, they hold any company papers in their capacity as company director, not as a councillor.

Questions asked on 06.01.14:

1. Why have my questions to Overview & Scrutiny meeting of 11th November 2013 not been answered and provided to members of this committee?

As explained to GOSC on 6 January, I had not fully understood Mrs M's questions. I thought this was a narrow technical question about Fol. The report tries to address the wider ambit of Mrs M's concerns; and, so far as my misunderstanding contributed to the delay, I apologise to her.

2. Hereford Futures Ltd is an "Arm's Length" company limited by guarantee and is not owned by Herefordshire Council. However, I note that in the accounts of Hereford Futures Ltd for the year ending 31.3.13; Accounting Policy 1.1 states that "*The company has net liabilities as at 31.3.13 and it was announced in April 2013 that the company would cease its operations, which would be transferred to Herefordshire Council, & ultimately be wound up. However, the company has received confirmation from Herefordshire Council that sufficient funding will be made available to the company to enable it to fulfil its obligations and pay any liabilities as they fall due. Accordingly, the directors have concluded that it is appropriate to continue to prepare the financial statements on a going concern basis.*" Who in Herefordshire Council would be able to give such a guarantee to an "Arm's length" Company prior to the budget for 2014/15 being agreed by either Cabinet or the Full Council?

The report explains that the former CFO wrote to the directors of HFL setting out the council's financial guarantees to HFL.

3. The chief executive of Hereford Futures Ltd had a pension contribution to the Local Government Pension scheme of £31,392 (YE 31.3.13) when his pension contributions are normally circa £12,667 p.a Why has such a guarantee for the liabilities of this company been given by Herefordshire Council, rather than the directors who own this "arms length" company, .?

Addressed in the report, although information is awaited from the Pension Fund.

4. There is no existing contract with Hereford Futures Ltd in the Council's records of Contracts as at September 2013 and yet since 1st April 2013 £180,740.37 has been paid to Hereford Futures Ltd (Herefordshire Council financial data sets as at 4.1.14). What services have been provided for this money and who agreed the contracts for which this money has been paid?

The report sets out the council and AWM funding for HFL and looks at what the company has achieved. The report also lists the numerous Cabinet reports relating to the redevelopment of the ESG area.

5. Why has Hereford Futures Ltd received more money from Herefordshire Council in the 8 months to Nov 2013 than in the previous 2 years when it was announced in April 2013 that the company would cease operations and would be wound down in 2013/14?

The report breaks down the funding to HFL by financial year. Prior to April 2011 HFL received substantial sums from AWM. After that date the company was dependent upon council funding. The funding guarantees given by the former CFO in May 2013 enabled the company to continue to operate and to be wound up in an orderly manner.

Bill Norman
Solicitor to the Council

10 March 2014

QUESTIONS FROM THE PUBLIC

Agenda item 6 invites the public to submit questions for consideration at the meeting. The following questions have been received.

The following has been received from Mrs E Morawiecka on agenda item 9, *Hereford Futures Limited*:

I would like to thank Mr Norman for his very detailed report and the first to come to the Overview and Scrutiny Committee providing detailed, up to date information about the public funding provided to Hereford Futures Ltd over the years and the way in which Freedom of Information and accountability of public money applies to this company and any other such "arm's length, private limited companies".

Question 1: Ref 19 it states, "officers are in discussions with HFL and the HCA about the extent to which the Council may take on any HFL liabilities in the future". The report states that neither the Leader of Herefordshire Council nor the Chief Executive are on the board of Hereford Futures Ltd at the present time, which means that Herefordshire Council is no longer a member of the company and so exempt from liability in the event of the winding up of the company. Why are officers in discussions about the extent of Herefordshire Council taking on liability for the debts of an "arm's length; private limited company" unconnected and unaccountable to Herefordshire Council and operating out of a private residential address?

Question 2: In the public accounts for HFL the total directors remuneration increased by £24,041 (+16.21%) from £148,270 in the financial year 2011/12 to £172,311 in 2012/13. Contributions to the Local Government Pension likewise increased over the same period from £12,667 to £31,392. The report at point 21 explains that the Chief Executive of HFL waived salary in 2012/13 to increase his pension contribution. Is it correct though that this waive of salary meant that the Chief Executive of Hereford Futures Ltd still went home with more net pay than in previous years and a topped up pension fund as well when pay and jobs were being cut in Herefordshire Council?

Question 3: I appreciate what the report says about Councillors as Ex Officio appointments to the Board of a publicly funded company, apparently hold minutes of board meetings of that company purely in their capacity as a director of that company. Does this mean then that any decisions made by those public appointees are purely made in their capacity as private individuals and therefore not in their capacity as Leader and Chief Executive of the Council?

GENERAL OVERVIEW AND SCRUTINY COMMITTEE

- Question 4:** Whilst no serving council officers are directors of HFL, from the only publicly available set of Board Meeting Minutes, serving council officers attended board meetings of Hereford Futures Ltd. What exactly is the situation regarding the minutes held by a full time officer of Herefordshire Council in attendance at board meetings of such a company?
- Question 5:** The Articles and Memorandum of Association of HFL permits directors to have, and benefit from, “conflicts of interests”. Does the County solicitor think this is acceptable in any company which is involved in handling millions of pounds worth of public money?