

AUDIT & GOVERNANCE COMMITTEE

MINUTES of the meeting held on Wednesday, 3 March 2021 commencing at 1.00 pm and finishing at 6.05 pm

Present:

Voting Members: Councillor Nick Carter – in the Chair

Councillor Tony Ilott (Deputy Chairman)
Councillor Paul Buckley
Councillor Dr Simon Clarke
Councillor Charles Mathew
Councillor D. McIlveen
Councillor Glynis Phillips
Councillor Roz Smith

Non-voting Members Dr Geoff Jones

By Invitation: Janet Dawson and Adrian Balmer, Ernst & Young

Officers:

Whole of meeting Sarah Cox, Chief Internal Auditor; Steve Jorden, Corporate Director Commercial Development, Assets and Investment; Lorna Baxter, Director for Finance; Claire Taylor, Corporate Director of Customers and Organisational Development; Hannah Doney, Head of Corporate Finance; Anita Bradley, Director of Law and Governance; Glenn Watson, Principal Governance Officer; Lucy Tyrrell, Committee Officer

Part of meeting

Agenda Item	Officer Attending
Item 10	Paul Fermer, Assistant Director of Community Operations

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with [a schedule of addenda tabled at the meeting] [the following additional documents:] and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda and reports [agenda, reports and schedule/additional documents], copies of which are attached to the signed Minutes.

14/21 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

(Agenda No. 1)

There were no apologies for absence.

Councillor Jeannette Matelot advised she will continue to attend the Committee until the end of March 2021.

15/21 DECLARATION OF INTERESTS - SEE GUIDANCE NOTE

(Agenda No. 2)

There were no declarations of interest.

16/21 PETITIONS AND PUBLIC ADDRESS

(Agenda No. 3)

The Committee received the following addresses:

Item 13 – Councillor Jane Hanna

Item 15 – Councillors Jane Hanna and Tim Bearder

17/21 MINUTES

(Agenda No. 4)

The minutes of 13 January 2021 were agreed.

Item 5/21 – Treasury Management Strategy Statement and Annual Investment Strategy for 2021/22 - Lorna Baxter, Director of Finance, confirmed that the Treasury Management Strategy Team will consider investing larger amounts in the strategic funds as part of the Mid-Term Review which will be brought to this Committee in November.

9/21 – Provision Cycle Update – in response to Councillor Phillips question, Steve Jorden, Director for Commercial Development, Assets and Investment advised that the new Head of Procurement Contract Management position is in place and Category Management positions underneath that position have also been appointed and will be in place in the coming months. Steve Jorden assured Members that by the end of May all senior management roles will be filled.

Councillor Smith requested further information on communication with Members and how the provision cycle and the 23 steps will be communicated to Members? Steve Jorden advised this will be through Group Leaders and Cabinet with an all Member briefing following to ensure all Members receive an in-depth update.

Item 10/21 – Highways Contract Update – Steve Jorden assured Members that the sale of Skanska is going ahead, and the extension of the contract is in process.

Item 12/21 – Members Advisory Panel – Anita Bradley, Director of Law and Governance advised that she will undertake to take the recommendation of this Committee to Full Council. **(ACTION)**

18/21 ERNST & YOUNG - PROGRESS REPORT INCL AUDIT PLAN

(Agenda No. 5)

Janet Dawson presented the report Oxfordshire County Council & Oxfordshire Pension Fund Annual Letter for the year ended 31 March 2020 – February 2021 and advised the report is prepared as a summary for Members to understand the scope of work undertaken and the findings of that.

Janet Dawson and Adrian Balmer responded to Members' questions on the following:

- In terms of pension fund fees, once these are presented, they are submitted to the PSAA which is a complicated process and would hope this to be completed in six months however they have no set timescales on their process.
- The pension fund fees set do not reflect the risk profile of the organisation, which although has not changed over the past couple of years, also does not reflect the change in the regulatory requirements set by the FRC.
- We are satisfied in how the contingent liabilities and potential expenditure for the Carillion settlement is included and presented in these accounts.
- The figure presented for the valuation of assets was the judgemental difference between the internal and external valuations received. The main driver of this was the valuation of special schools and a smaller difference of primary schools. Hannah Doney confirmed that they are working closely with the team to address this for next year, and although this is a 3-year valuation programme and would not normally be reviewing for another two years, will be requesting valuations for these assets on the 2020/21 process to avoid any further differences.

19/21 STATEMENT OF ACCOUNTS 2020/21

(Agenda No. 6)

Hannah Doney, Head of Corporate Finance introduced the Statement of Accounts 2020/21 which sets out the approach taken to the preparation of the 2020/21 Statement of Accounts, including the proposed timetable for the 2020/21 Statement of Accounts and external audit taking into account the consultation of amendments to the Accounts and Audit Regulation and the processes around this.

Hannah Doney further highlighted that the draft regulations, currently under consultation, seek to remove the fixed period for public inspection of the accounts from 31 May to on or before 1 August, however as set out in this paper, we are aiming to complete the draft accounts by early June, of which a link will be sent to this Committee upon publication, with the external audit commencing in early June to be approved at the Committee meeting in July or September.

Hannah Doney responded to Members' questions as follows:

- The School and Early Years Finance (England) Regulations 2020 came into force on 21 February 2020 and are applicable to the 2020/21 accounts, and these further stipulate that a deficit on the Dedicated School Grant (DSG) must be carried forward to be funded from future DSG income. The Council has a deficit on the DSG and therefore will be treated on the balance sheet as a negative balance, rather than held within the Council's total Earmarked Reserves. This is not a unique position for OCC, as a lot of local authorities with a responsibility for schools have a deficit on their High Needs Block funding. Lorna Baxter, Director of Finance advised that this is a cash problem, which does not solve the issue and is something that she will be lobbying for in her position as President for the Society of County Treasurers.

- The going concern for local authorities is different than that for private companies, however due to legislative changes and the impact of COVID, there has been a change of focus from the auditors and they now require more information of our going concern. This is forecast for the next 12 months, and that information has been included in our budget preparation.
- The forecast deficit has not changed from the previous year and are expecting a similar deficit for the 2021 accounts, therefore the backlog of EHCPs was built into that forecasted projection, and there is not sufficient evidence to suggest that this figure will reduce in the next few years.
- Current rules do not allow Councils to use general funds to offset the High Needs deficit, therefore capitalisations that have been sought by and agreed for other Councils are more for their sustainability in their general funds rather than High Needs deficit.
- The implementation of IFRS 16 Leases has been delayed until 1 April 2022, however work we had begun this year will put us ahead, but these will need to be revalued prior to inclusion on the balance sheet.

RESOLVED to

- (a) note the proposed timetable for the 2020/21 Statement of Accounts and external audit**
- (b) ratify the accounting policies as approved by the Chief Finance Officer and included as an appendix to this report.**

20/21 COUNTER-FRAUD UPDATE

(Agenda No. 7)

Sarah Cox, Chief Internal Auditor introduced the report which presented a progress update for counter-fraud activity, including a plan supporting the Council's Anti-Fraud and Corruption Strategy and a summary of counter-fraud activity against the annual plan.

Sarah Cox highlighted the increase in staff resource to have capacity to deliver the service jointly across both Councils including 2 Counter-Fraud Officers and 1 Intelligence & Data Officer. These have already shown a positive impact to the team with proactive activity enabling more focus on high profile risk areas.

Sarah Cox and Tessa Clayton, Audit Manager responded to Members' queries as follows:

- Some open cases will take longer due to the ongoing investigations involved, including those with outside agencies such as police investigations. However, these are still being actively monitored by the team and cases are not closed until all routes have been satisfied.
- Reactive objectives refer to team actions, proactive objectives are raising awareness on a greater level throughout the organisation. COVID has impacted on the amount of proactive work taking place, however the updated plan presented to the Committee in July will show more proactive practices taking place.
- Joint working with CDC will commence on 1 April, so the number of cases before you today do not include these, therefore these will increase however we will have the staffing capacity to deal with these.

The Committee requested that their thanks be recorded for Sarah Cox and her team for all their work, and by not allowing the lack of resourcing to impact the quality of work required.

RESOLVED to comment and note the progress update for counter-fraud activity.

21/21 PROGRESS UPDATE ON ANNUAL GOVERNANCE STATEMENT ACTIONS (Agenda No. 8)

Anita Bradley, Director of Law and Governance introduced the report which provides a description of the effectiveness of the Council's governance framework and an Opinion as to its sufficiency. In last year's Annual Governance Statement (AGS), several governance actions were listed as priorities for 2020/21 and this report gives a brief update on those actions.

Anita Bradley responded to Members' queries as follows:

- The next report will include an itemised appendix with a timeline in order that the Committee can track and monitor against targets set.
- To give Committee assurance that the AGS will include a statement that due process is followed when issuing contracts in relation to the COVID-19 pandemic.

RESOLVED to consider and note the outcomes on the governance actions agreed in last year's Annual Governance Statement.

22/21 AUDIT & GOVERNANCE COMMITTEE ANNUAL REPORT TO COUNCIL 2020 (Agenda No. 9)

Councillor Nick Carter, Chairman of the Audit & Governance Committee introduced the report which set out the work of the Audit & Governance Committee during 2020/21.

Sarah Cox, Chief Internal Auditor, advised that the report can be amended or added to at this stage before it is presented to the Full Council's May meeting. She further advised that the report would be updated to take into account the review of the procurement award process on the agenda for this meeting.

RESOLVED to consider the Annual Report and suggest any additions or amendments.

23/21 HIGHWAYS CONTRACT UPDATE (Agenda No. 10)

Paul Fermer, Assistant Director of Community Operations presented a set of slides to the Committee which gave an update on the actions from the Highways Contract audit.

Paul Fermer responded to Members' questions as follows:

- There has been a greater level of oversight and ownership from officers following the transformation work carried out over the last couple of years.
- Causeway is an 'off the shelf' product and in the short term is the better system.
- Partnership terms of reference have been reviewed and updated and can report of the robustness of how the contract is governed.
- Skanska has a selection of suppliers they can use and competitively benchmark against, therefore are keen to push hard on value for money initiatives.
- The company uses local contractors and are keen to highlight the social value of using local companies.
- As part of our due diligence the business relationship of M Group Holdings has been questioned, they state their business model focuses on stability and not profit margins, and there are opportunities to attain added value through this partnership. We are one of many local authorities going through this process and are able to share intelligence with them.
- There are two clear end dates to this contract, the existing contract ends on March 2023, with a decision to extend until March 2025. This decision will be made by Cabinet in April, if the decision is not to extend, we will go out to tender.

The Committee requested that a paper be brought to this Committee outlining the pros and cons of retendering this contract to make a recommendation to Cabinet prior to renewing this contract. **(ACTION)**

24/21 SCALE OF ELECTION FEES AND EXPENDITURE

(Agenda No. 11)

Anita Bradley, Director of Law and Governance introduced the report which sets out a scale of expenses as a guide to expenditure incurred during elections by the Returning Officer and paid by the Council brought to this Committee in the interests of transparency for this area of election governance.

Anita Bradley highlighted that as part of a consultation with the County, City and District Council election specialists in Oxfordshire, this scale will be used when acting on behalf of the Returning Officer and they are generally mindful of the County Council's scale of expenses when setting their own scale of expenses.

Anita Bradley updated the Committee on the current situation of holding an election during the pandemic, however wished to assure Members that weekly meetings are held to plan for these elections and is confident there will be sufficient staff to run these.

RESOLVED to note the Scale of Election Expenses for the financial year 2021/22, as shown in the Annex to this report, for the election of County Councillors and any other poll associated with the County Council during the year.

25/21 AUDIT WORKING GROUP

(Agenda No. 12)

Sarah Cox, Chief Internal Auditor presented the report which summarised the meeting of the Audit Working Group meeting held on 10 February 2021. Dr Geoff

Jones advised that the group received a further update on the progress of SEND, following the weaknesses identified during the audit completed during 2020/21. He further advised that the group acknowledged there was more work to complete in the improvement plan, however officers had agreed to circulate the Accelerated Progress Plan & Letter following the outcome of the DfE visit due in February 2021 with a planned follow up audit for later in 2021/22.

RESOLVED to note the report.

26/21 CONSTITUTIONAL REVIEW

(Agenda No. 13)

Anita Bradley, Director of Law and Governance presented the report which set out one substantive change for potential consideration by Full Council and outlined the administrative changes to be made in-year by the Monitoring Officer. The Committee was asked to note and comment upon these matters.

Anita Bradley also highlighted the third recommendation which asked the Committee to endorse the proposal that the Monitoring Officer should bring forward proposals to this Committee after the May 2021 County Council elections in the 3rd cycle of meetings for this Committee, for achieving a full review of the structure and content of the Constitution.

Councillor Jane Hanna spoke to the Committee and expressed her concerns around the timetabling of this review, stating that the intention of the administration throughout 2020 was that a review would be undertaken by January 2021 by this administration, the urgency of which was demonstrated by Item 15 on the agenda for this Committee. She highlighted that following requests from herself, the Deputy Leader of the Council had agreed to take on her points made in relation to ensuring that the COVID-19 response and Scrutiny Procedure Rule 19(a) was addressed in the upcoming review of the Constitution to ensure that the Council was fit for the future in relation to COVID-19 planning for Restart, Recovery, and Renew. She emphasised that there was a huge amount of experience within the County Council, who have been Councillors throughout the pandemic so far, who could contribute most effectively to this review.

Councillor Hanna provisionally welcomed the proposed amendment to the key decision which defined the meaning of a significant sum, however expressed concerns regarding the lack of transparency as to how the procurement settlement detailed in Item 15 came about or under what powers of the Constitution the settlement payment was made without the involvement of Cabinet or Full Council.

Councillor Hanna also spoke to the new rules made last year on Part 3.1A – Virtual Meeting Procedure rules, which leaves little time for full scrutiny of the Committee papers if they are tabled late, however welcomed the clarification that these had been requested due to the temporary virtual working arrangements as a back-up if technology should fail.

In relation to the change to how a key decision is defined within the Constitution, she welcomed further comment from the Monitoring Officer that would explain this

amendment. She would also welcome an extension to the review period, enabling a full review which should be all-member led.

Councillor Nick Carter, Chair of the Audit & Governance Committee thanked Councillor Hanna for her comments. He stated that he had hoped Councillor Hanna had been assured that the issues regarding the timetable had been satisfied, and welcomed her comments regarding an all-member led review, which should be taken following the elections to enable the new Council to push this forward.

Anita Bradley responded to the above and other Members' queries as follows:

- The first recommendation proposed increased transparency to key decision making within the Council, especially for those key decisions taken by Officers ensuring there is full consultation with the relevant Portfolio Holder.
- It would be the responsibility of the Monitoring Officer to ensure that Officers are made aware of and trained in the process of democratic decision making in the Constitution.
- The Constitution currently sets out the description of a Key Decision in a footnote in Article 14 (Decision Making). The proposal is that this be moved into the main body of Article 14 and ensure that decisions can only be taken following consultation with the relevant Cabinet Member and Section 151 Officer. The definition of 'significant' will be clearly defined within the document.

The Committee expressed concerns to the timescale detailed in recommendation (c), and requested that this be extended to allow the new Council adequate time to undertake a full all-member led review and was amended so that the Monitoring Officer bring forward proposals to this committee in the 4th cycle of meeting for this Committee.

RESOLVED to

- (a) Endorse the proposed amendment to review and bring the definition of a Key Decision into the main body of the text with the addition of consultation arrangements for Key Decisions taken by Officers;**
- (b) Note the administration changes that the Monitoring Officer intends to make to update the Constitution to bring clarity and correction to it;**
- (c) Endorse the proposal that the Monitoring Officer should bring forward proposals to this Committee after the May 2021 County Council elections in the 4th cycle of meetings for this Committee, for achieving a full review of the structure and content of the Constitution.**

27/21 WORK PROGRAMME

(Agenda No. 14)

The following changes/additions were agreed:

Constitutional Review moved from 15 September 2021 meeting to 17 November 2021.

28/21 REVIEW OF PROCUREMENT AWARD PROCESS UPDATE

(Agenda No. 15)

Steve Jorden, Corporate Director for Commercial Development, Assets and Investment introduced the report which followed the successful challenge from an existing contractor as a result of the parking enforcement award process. The Chief Executive commissioned an overarching fact-finding review of the procurement and subsequent litigation actions, settlement and costs associated with the challenge.

Steve Jorden highlighted that this had been a complex case, with a thorough investigation and the purpose today was to take the Committee through the key findings of the investigation.

Claire Taylor, Corporate Director for Customers and Organisational Development introduced the contents of the report, setting out the independent investigation of which she was requested to commission by the Chief Executive following an internal review completed in February 2020. Due to the seriousness of the issue, and the potential for staff disciplinary action, it was recommended by the Council's external legal advisors that that specialist advice be sought, from an investigator who had previously undertaken similar reviews on behalf of the LGA and NHS.

Claire Taylor advised that her role was to agree the scope and terms of reference for the review, remain objective and ensure that the independent investigator had full access to all documentation and administrative support for that work undertaken. The independent investigation was made more complex due to COVID-19 and the lockdown restrictions in place, however she acknowledged that given the complexity of the investigation it would always have been an extensive exercise.

Claire Taylor advised the independent investigatory work was concluded by June 2020 and set out the finding of the review including that the nature of the issues was systemic.

Steve Jorden followed by briefing Members on the key issues identified in the Marston Holdings Ltd case and the procurement and contract management review and improvements, this included a management action plan contained in Annex 1 and a thorough presentation detailing the Provision Cycle programme.

Officers responded to Members' queries as follows:

- The issue was communicated to the relevant Portfolio Holder and the Audit & Governance Committee would have been informed following the investigation.
- The Constitutional Review will allow Members to review the protocol on how information is shared with Members, however the recognition of the role of governance highlighted by this Committee will be fed back into this review.
- Full details of the key issues are outlined within the action plan, and Item 2 directly addresses the issues associated with procurement including guidance, management and governance, and the activity undertaken since the issue was raised.
- Companies will also challenge contracts they do not wish to lose and since this challenge, the Council has not had any other successful challenges.

Councillor Tim Bearder, spoke to the Committee, reiterating Members' comments stating that he failed to see how the Audit & Governance Committee could fulfil its

role in ensuring they provide a risk management system role to be able to offer advice and recommendations to the Council so that it might improve. He also stated that the Committee could not be assured that the matters had been addressed in detail and rectified for the future without seeing the full copy of the independent report.

Claire Taylor responded that the report is a full HR led investigation and therefore cannot be released due to the confidentiality of the individuals investigated.

Anita Bradley, Director of Law and Governance supported this response, adding that because the report involves witness statements, to release that information would likely be in breach of the duty of confidentiality and the Data Protection Act and could potentially bring more legal action on the Council. The correct information has been presented to this Committee whose role it is to take these points forward.

Councillor Jane Hanna, spoke to the Committee supporting the previous requests for access to the full report which would ensure greater trust moving forward if all facts were given full sight. She highlighted that, as a member of Full Council, she has responsibility for information and questioned why there is non-disclosure to Members or this Committee, which is inconsistent with Part 8.1 Clause 23 of the constitution which requires disclosure even if exempted if relevant to the matter in hand. She further questioned the timing of the payments and which clause in the constitution allowed these powers, and also the virement rules for spending outside of the budget and expressed concerns if other payments had been made without relevant visibility. She concluded by asking for the clause in the constitution used to make the payment, not because the payment had to be made but to make sure that these powers have not been more widely used and to request greater visibility moving forward?

Lorna Baxter, Director of Finance responding to queries raised during discussions regarding where the settlement was included on the Council website, advised that the settlement was reached commercially in confidence and included in the restricted papers. These sums were reflected in the Business Management and Monitoring Reports sent to Cabinet in February 2020 and the Outturn Report to Cabinet in May 2020. The legal costs were included within the Community Operations part of the Communities Directorate and reflected in both reports when the settlement had been paid.

Councillor Nick Carter, Chairman of the Audit & Governance Committee thanked Members for their patience throughout these discussions and advised that his Annual Report will include wording that this item has been through the Committee to be picked up again at a future date.

In agreeing the recommendations, the Committee noted that it was on the basis that the decision on Item 13 above had relevant to this item.

RESOLVED to

- (a) Consider the management response and action plan resulting from the Marston Holdings Ltd case, as detailed in this report and Annex 1;**
- (b) Comment on the improvements highlighted in this paper, and;**

(c) Note the thematic findings following the review.

..... in the Chair

Date of signing