

SOUTH WALES FIRE & RESCUE AUTHORITY

MINUTES OF THE FINANCE, AUDIT & PERFORMANCE MANAGEMENT MEETING HELD ON MONDAY 11 MAY 2015 AT SOUTH WALES FIRE & RESCUE SERVICE HEADQUARTERS

57. PRESENT:

| Councillor | Left | |
|-------------------------|-------------|--------------------|
| J Morgan (Deputy Chair) | | Blaenau Gwent |
| S Bradwick | 1200 hrs | Rhondda Cynon Taff |
| D T Davies | 1200 hrs | Caerphilly |
| P Drake | | Vale of Glamorgan |
| C Elsbury | 1130 hrs | Caerphilly |
| E Galsworthy | | Merthyr Tydfil |
| K Hyde | 1200 hrs | Cardiff |
| M Javed | | Cardiff |
| A Jones | | Torfaen |
| S J Jones | | Rhondda Cynon Taff |
| B Morgan | 1200 hrs | Rhondda Cynon Taff |
| S Pickering | 1200 hrs | Rhondda Cynon Taff |
| M Powell | | Monmouthshire |
| P Seabourne | 1200 hrs | Torfaen |
| C Smith | | Bridgend |

APOLOGIES:

| | |
|------------------|-------------------|
| P Hannon (Chair) | Newport |
| E Hacker | Vale of Glamorgan |
| C James | Bridgend |
| J Jones | Caerphilly |
| R McKerlich | Cardiff |
| M Rahman | Newport |
| V E Smith | Monmouthshire |

ABSENT:

| | |
|------------|---------|
| D Ali | Cardiff |
| G Phillips | Cardiff |

OFFICERS PRESENT:- CFO H Jakeway, DCO S Chapman (Monitoring Officer), ACO P Haynes – Director of Peoples Services, ACFO A Thomas – Director of Operations, Mr C Barton – Treasurer, Mr

G Thomas – Head of Finance & Procurement, Mr C Powell – Monitoring Officer, Mr Mark Malson – Head of HR, A/AM Ian Greenman – Head of Training & Development, A/AM Alison Kibblewhite – ‘SOF’ Project, Mr Ron Price – Wales Audit Office, Ms Katherine Spooner – KPMG Accountant, Ms Lisa Mullan – Senior Accountant

58. TO CONSIDER AN ITEM OF URGENT BUSINESS – REASON FOR URGENCY: TO REDUCE THE FINANCIAL IMPACT ON THE FIRE AND RESCUE AUTHORITY AND AVOID FINANCIAL PENALTIES BEING IMPOSED ON THE AUTHORITY BY HMRC

As Monitoring Officer, the Deputy Chief Officer informed Members that all Fire Authority Members had been invited to attend the Finance, Audit & Performance Management Committee meeting in order to consider an urgent report on ‘Protected Pension Age – Fire Authority Liability’, as it was considered that it was an important decision that all Members should be involved in so that they may express their views and vote on a recommendation.

However, the Committee were advised that if this approach were to be endorsed and adopted by Members at the meeting, then it would be necessary for the Finance, Audit & Performance Management Committee Members to address procedural issues to permit this.

As a consequence, the Deputy Chair consented to the Finance, Audit & Performance Management Committee considering the urgent report and moved a resolution under Procedural Standing Order 8.4 to vary the order of business on the agenda to allow consideration of items out of order, which was duly seconded.

RESOLVED THAT:

58.1 Members of the Finance, Audit & Performance Management Committee unanimously agreed to vary the order of business for the meeting.

58.2 A motion was then moved and seconded under Procedural Standing Order 11.1(L) to suspend Procedural Standing Orders, namely Procedural Standing Order 6.1 in relation to voting, to enable all Fire Authority Members present to vote on the urgent item regardless of whether or not they were a member of the Finance, Audit & Performance Management Committee.

58.3 Members of the Finance, Audit & Performance Management Committee unanimously agreed to suspend Procedural Standing

Order 6.1 and permit every Fire Authority Member present at the meeting to vote on the urgent paper.

59. DECLARATIONS OF INTEREST

As Rhondda Cynon Taff Borough Council were the appointed Scheme Administrators of the Service's Pension Scheme and could potentially be implicated in the issue under consideration, Councillors Bradwick, B Morgan, Pickering and S Jones declared a personal and prejudicial interest in the urgent agenda item and confirmed they would leave the meeting before the report was considered.

All other Members declared a personal non-prejudicial interest in each agenda item which affected their Authority.

Councillors Bradwick, B Morgan, Pickering and S Jones withdrew from the meeting.

60. PROTECTED PENSIONS AGE: FIRE AUTHORITY LIABILITY

The ACO People Services informed Members that the report summarised the legal and financial liability of the Authority in relation to HMRC tax rules in respect of protected pension ages for three individuals previously employed as Wholetime staff within the Service. He explained the background to the changes in the tax legislation, the reasons why the three individuals were now subject to the tax charge and the options available to the Authority.

The Monitoring Officer stressed that although this was a very difficult decision for Members due to the distressing personal position the individuals concerned were in as a result of the change in tax rules, Members must adhere to the key issues when reaching their decision. She stressed that Members of the Fire Authority were custodians of public funds, and as such, those funds could only be applied for purposes for which there is a lawful authority. She continued that the ACO People Services had outlined extensive advice from Queen's Counsel and financial specialists, which all said that it was the Scheme Administrator (Rhondda, Cynon Taff Borough Council Pension Section) and the Scheme Member who had responsibility to ensure that they understood the implications of any action that was taken. The Fire Authority's liability only extended to a small charge as a consequence of the action taken by the Scheme Members, with the individual Scheme member being primarily responsible for the tax charges.

Members were also reminded that although HMRC did not mind who paid the tax charges so long as they were paid, as custodians of public

funds they must be concerned with responsibility for payment. Members were advised that they should consider all relevant facts, including the original circular; the FBU circular advising of the changes; the legal advice received by the Service; HMRC advice; and consider the liability to pay and the legal powers available to the Authority to apply public funds.

Members were advised that the Service was not aware of any specific legal provision which permitted the Authority applying public funds for the discharge of an individual's personal tax bill in the current situation and in the light of the advice received, although the Service was aware that one or two other Authorities had picked up these costs. Whilst it was difficult to know what legal grounds these payments were made on as confidentiality agreements had been signed in some cases, Members were made aware of the case of one Police Authority which had made a settlement in order to prevent any future legal action being taken against that force in relation to this matter as it had been deemed to be very costly, complex and lengthy. Members were advised that this was a consideration for them, but that this should be weighed against the legal advice received and the appropriateness for utilising public funds in this way at this stage of the process.

The Monitoring Officer continued that she had also considered in detail the content and findings of the recent independent investigation into alleged unlawful payments at Carmarthen Council, where pay arrangements were put in place for the Chief Executive with a view to mitigating personal tax liability. Whilst it was appreciated that this situation was slightly different as it related to an existing tax liability, it was the Monitoring Officer's view that the principles were transferable. Members were advised that the Wales Audit Office were present at the meeting and had confirmed that they could address this point if Members required clarification.

Summing up, the Monitoring Officer advised that bearing in mind all the advice and information, and weighing up all of the legal considerations, there was one recommendation that she could recommend at the current time from a Monitoring Officer perspective, and that was for Members to resolve to pay the scheme sanction charge and to allow the three individuals to pay their own tax charge. She appreciated that this was an extremely emotive recommendation, but considered that to do otherwise on the basis of the information available at this time could expose the Authority to an independent investigation of the expenditure and whatever consequences may flow from that. It was stressed that this recommendation did not preclude the possibility of legal action being pursued by the Scheme Members if they considered this

appropriate at a later date and that this would have to be considered at that time on the basis of information available then.

The Treasurer informed Members that in deciding this matter, Authority Members had to consider whether it would be unlawful or unreasonable to meet the personal tax liabilities of the affected employees.

He continued that as indicated in the report, there were circumstances in which employers could meet such liabilities and there were specific taxation rules around how such 'settlement agreements' were dealt with from a taxation perspective. However, the mere fact that such provisions exist within tax legislation did not constitute a legal power for the Authority to meet such costs as a Public Authority.

He considered the question in his mind came down to an assessment of whether any settlement of the personal liabilities would be in the interests of the Service users and taxpayers of the South Wales Fire Authority area who ultimately fund the Fire Authority.

At face value, the settlement of a personal tax liability had no obvious or direct benefit to the Service users or taxpayers of the South Wales Fire Authority area.

From a purely financial perspective, it could be argued that there was a risk of legal action by the employees and that the associated costs of defending such action would be significant enough to warrant settlement as a cheaper overall course of action.

Such an argument presumed that legal action would be successful and the South Wales Fire Authority would end up paying all of the settlement and associated legal costs.

There was also a further consideration in terms of legal action which could not be ignored. Given recent high profile and related events in the Welsh Public Sector, a decision to settle a personal tax liability would more than likely be challenged by a taxpayer or the Auditor General. Defending such a challenge would in itself attract significant legal costs.

Given that legal costs defending the decision were difficult to quantify and critically, they appeared to be a risk regardless of which decision Members arrived at, it would seem that such legal costs should not be a relevant consideration for Members at this time.

On the basis of the lack of any financial rationale which could be conceived to be in the interest of the Service users or taxpayers of

South Wales, it was the Treasurer's view that there was a significant risk of this expenditure on meeting personal tax liabilities being deemed unlawful and he therefore recommended that Members confirm that the Authority should only meet the charges which it was liable to pay under the relevant legislation.

As the Head of Paid Services, the Chief Fire Officer stated that although he realised this was an extremely difficult decision for Members, he confirmed that the Fire Brigades Union in 2010 had published a circular on its website to make its members aware of issues around protected pension age. He confirmed that the surcharges had been triggered solely because individuals were employed on two separate contracts, Wholetime and RDS, and had retired from Wholetime at the age of 50, but did not retire from their secondary contract. He also highlighted that Officers could not give advice to employees on their retirement. The Chief Fire Officer took the opportunity to thank Members for considering the urgent report at such short notice, and also thanked Officers for all their time and efforts in seeking advice and trying to resolve matters which affected the individuals who were public servants caught up by the changes and regulations.

The Wales Audit Officer also stated that he appreciated this was a difficult time for the individuals, but unfortunately he could not provide or add any advice. However, he confirmed that the Auditor General would question any payments made to settle individual tax charges in relation to protected pension age. He stressed that the situation was set out clearly and that only Fire Authority Members could make a decision.

Following a very lengthy question and answer session on lawful and unlawful payments, and tax liabilities on retirement, the ACO People Services informed Members that neither the Service nor the Pensions Administrator had been aware of the change in HMRC tax rules around protected pension age prior to HMRC making initial contact. Members were also advised that the costs for the Service to obtain specialist advice amounted to £18,000. The ACFO Service Delivery assured Members that a safeguard was now in place for employees to consider their situation when retiring, and continuing with a secondary contract.

In the light of the discussion, a motion was moved by Councillor Seabourne that the Authority pay the Scheme Sanction Charge, and that the three individuals be required to pay their own tax charge. The motion was duly seconded.

RESOLVED THAT

- 60.1 Following a vote of 8 for, 1 against, and 2 abstentions, Members agreed to pay the scheme sanction charge and that the three individuals pay their own tax charge.
- 60.2 Members confirmed that the reasons for their decision were threefold, namely:
- 60.2.1 The Authority could not spend public funds on meeting individual tax bills.
 - 60.2.2 The professional advice received confirmed that the Authority was not liable for the individuals' tax charge, only the scheme sanction charge.
 - 60.2.3 It would be unlawful for the Authority to make a payment to meet the individuals' personal tax bill in the current circumstances.

Councillors Bradwick, B Morgan, Pickering and S Jones returned to the Finance, Audit & Performance Management meeting at 1130 hours.

61. PRESENTATION OF 'SHAPING OUR FUTURE' TO FAPM AND HR & EQUALITIES MEMBERS

The Deputy Chair welcomed Members of the HR & Equalities Committee meeting for the joint presentation of 'Shaping Our Future'.

A motion was then moved and seconded under Procedural Standing Order 11.1(L) to suspend Procedural Standing Orders, namely Procedural Standing Order 6.1 in relation to voting, to enable both HR & Equalities Committee Members and Finance, Audit & Performance Management Committee Members present to vote on the item under consideration due to the overarching impact the subject had on the work of both Committees.

The DCO informed Members that the two Committees had been invited to attend the meeting in order to consider the 'Shaping Our Future' electronic presentation, with the aim of reviewing and evaluating the Service's staffing structure by the year 2020, and for Members to consider two proposals.

A/AM Kibblewhite and the Head of HR delivered the electronic presentation to Members and a question and answer session followed.

RESOLVED THAT

- 61.1 Members approved the acquisition and implementation of a new electronic Job Evaluation System for the Service to replace the existing paper based model, and agreed to the option of a single software fee of £19,700 for the software (one off payment) and £3,000 per annum to host the system being incurred for the chosen model.
- 61.2 Members also agreed to the establishment of an Officer Steering Group to oversee the implementation of the project.
- 61.3 Members noted that a more detailed presentation would be presented to a further joint Committee meeting at a later date on how the question hierarchy was structured for Members information.

Members of the HR & Equalities Committee withdrew from the meeting, and Members of the Finance, Audit & Performance Management remained to proceed with their meeting.

62. CHAIR'S ANNOUNCEMENTS

The Deputy Chair informed Members that following surgery Councillor Hannon was recovering at home. On behalf of Members she agreed to send best wishes and hoped that Councillor Hannon had a speedy recovery.

63. MINUTES OF PREVIOUS MEETING

The following minutes were received and accepted as a true record of proceedings:-

- Finance, Asset & Performance Management Working Group meeting held on 19 January 2015
- Finance, Asset & Performance Management meeting held on 9 March 2015

64. REVENUE MONITORING REPORT 2014/2015

The Head of Finance & Procurement informed Members that the Revenue Monitoring report provided details of the annual revenue budget, expenditure and income to March, and a projected outturn position for the financial year ending 31 March 2015.

RESOLVED THAT

Members agreed to note the Budget Monitoring report.

65. CAPITAL MONITORING REPORT 2014/2015

The Head of Finance & Procurement informed Members that the Capital Monitoring report provided details of the total capital budget for the year, expenditure to date, and a forecast outturn position.

RESOLVED THAT

65.1 Members agreed to note the progress of the Capital Schemes, and the associated funding streams.

65.2 Members approved the alterations identified in Appendix 1 attached to the report.

66. RESERVES STRATEGY

The Treasurer presented a report which provided Members with information on the Authority's Reserves, together with background on the appropriate management of reserves in a local Authority context.

The report also provided background to recent reports and commentary regarding the reserves held by Authorities, and also the salient advice, guidance, reporting requirements, regulatory and accounting frameworks which were relevant to the subject.

The report sought to fulfil the Wales Audit Officer's recommendation for improvement contained within its Financial Planning Assessment for 2014/2015. The recommendation was for a 'written policy on the use of reserves'.

RESOLVED THAT

66.1 Members agreed to note the content of the report in respect of the reserves held by Authorities.

66.2 Following consideration, Members approved the content of the strategy at Appendix 1 to the report as a working basis for managing the Fire & Rescue Authority's reserve funds, subject to approval by the Fire Authority.

67. REPORT ON PROGRESS OF AUDIT, SCHEME AND CIRCULAR ACTION UPDATES AS AT 11 MAY 2015

The Deputy Chief Officer presented a report to Members which showed the latest progress recorded against actions arising from Internal Audits, Wales Audit Office Thematic Reviews, Operational Assurance Peer Reviews, Corporate Schemes, and Government Circulars at Appendix 1 attached to the report.

Graphical summaries showing all actions ongoing, overdue and completed since 2 July 2012 were also provided for each type of action.

RESOLVED THAT

- 67.1 Members agreed to note the contents of the progress report and graphical summaries.
- 67.2 Following a request by Members, Officers agreed that the actions highlighted in red would be closely monitored and brought back to Members at a later date.

68. FORWARD WORK PROGRAMME

The Deputy Chief Officer presented the Forward Work Programme, and informed Members that all items were complete, and a new Forward Work Programme would be re-shaped in the new Municipal Year.

RESOLVED THAT

Members accepted the Forward Work Programme for the Finance, Audit & Performance Management Committee.

The Deputy Chair thanked Members and Officers for all their hard work throughout the year on behalf of the Finance, Audit & Performance Management Committee.

Members took the opportunity to thank the Deputy Chair for successfully chairing a difficult meeting