



PERTH & KINROSS COUNCIL

CODE OF GUIDANCE

FOR

FUNDING EXTERNAL ORGANISATIONS

&

“FOLLOWING THE PUBLIC POUND”

MAY 2016

1 INTRODUCTION & BACKGROUND

- 1.1 Councils as public bodies are accountable for how they spend public money in the delivery of their services. They are also under a statutory duty to achieve Best Value in terms of the discharge of their functions and as such are being encouraged to consider innovative and alternative service delivery models. Irrespective of how Councils may design or deliver services, it is important that there is proper accountability and transparency as to how funds are being spent. This concept is known as “Following the Public Pound”.
- 1.2 Councils have the power to deliver services to discharge their functions in a variety of ways:
- **Direct provision** - where the services are delivered in-house through the Council’s own departments and employees
 - **Contracted provision** – where the services are contracted from other public, private, third sector or voluntary suppliers
 - **Arm’s Length External provision** – where a separate organisation is created to deliver the services on behalf of the Council and over which the Council has a degree of control or influence (e.g. ALEOs / Trusts)
- 1.3 In terms of:
- **Direct provision** - the Council accounts for their spend through the normal budget setting, monitoring and public reporting processes
 - **Contracted provision** - Procurement legislation and the Council’s internal Contract Rules set out the basis for engaging and contracting with other bodies. That procurement and commissioning process provides the transparency and accountability as to how the funds are being spent.
- 1.4 Historically there has been less clarity and transparency around spend where services have been delivered on behalf of Council through Arm’s Length External Organisations (ALEOs). The use of ALEOs has become increasingly popular as a service delivery model as external organisations may be able to provide a better range or quality of service, or provide services that would otherwise not be provided. External organisations may also be able to attract funding from sources not so readily accessible to the Council, such as the private or voluntary sectors. Concerns as regards the lack of transparency and proper accountability for funds around the use of ALEOs prompted the Accounts Commission and COSLA to publish the “Code of Guidance on Funding External Bodies and Following the Public Pound” (“the original Code”) in 1996. This sets out the principles of best practice when establishing significant funding arrangements with companies, trusts and other bodies other than on a contractual basis
- 1.5 Since then the original Code has been given more formal status under the Local Government in Scotland Act 2003, in establishing the statutory duty on councils to ensure that they secure Best Value in the discharge of their functions. Further work has been undertaken by the Accounts Commission and Audit Scotland to supplement the original Code as regards the governance of ALEOs.

- 1.6 The original Code reflects a self-regulatory approach and it is for Councils to interpret the Code and make their own arrangements as to how the general principles will be implemented locally.
- 1.7 This document constitutes the Perth & Kinross Council Code of Guidance for Funding External Organisations and “Following the Public Pound” (“the FPP Code”). It is based on the original Code as supplemented by the Controller of Audit’s report and Accounts Commission’s findings from March 2004 (“Following the Public Pound”) and the supplementary report by Audit Scotland entitled “Arm’s-length external organisations (ALEOs): are you getting it right?” from June 2011 (together the “FPP Framework”).
- 1.8 The FPP Framework cannot however be applied in isolation. As a public body, the Council is subject to a number of external rules and regulations governing how and with whom it spends its funds. In preparing this Code therefore, the following must be taken into account and adhered to:
- Procurement Reform (Scotland) Act 2014 and supplementary guidance
 - Public Contract (Scotland) Regulations 2015
 - State Aid rules set out in the Treaty on the Functioning of the European Union.
- 1.9 The FPP Code sets out the principles of best practice to ensure that the Council’s funding to external organisations is carried out in a way which is consistent across all services and proportionate to any risk to the Council associated with the funding.

2 SCOPE OF THIS CODE OF GUIDANCE

2.1 In this Code:

“Assistance-in-kind” includes all staff time and all associated costs involved in enabling the outside organisation to carry out its core activities which are essential to its continued existence e.g. administrative support, professional services, advice, accommodation, rates remission, use of equipment, training, preparation of material for reporting to Council etc.

But does not include:

- staff time and associated costs involved in supporting and developing groups as part of Council’s duty to promote and support community action;
- staff time and associated costs in providing advice on setting up the funding and applications to Council
- staff time and associated costs incurred in the formal monitoring and review of funding arrangements by Council;

“Best Value” means balancing quality and cost considerations in improving performance. Achieving Best Value requires the Council to make arrangements to secure continuous improvement in performance (while maintaining an appropriate balance between quality and cost) and in doing so to have regard to economy, efficiency, effectiveness, equal opportunities requirements and to the achievement of sustainable development;

“Contract Rules” means the rules and regulations put in place by the Council for advertising and awarding contracts as more particularly set out in section 81 of the Local Government (Scotland) Act 1973;

“External organisation” includes Arm’s Length External Organisations, companies, trusts, voluntary organisations and grant aided bodies;

“Funding” means money, grants, capital grants, guarantees, loans, common good fund, shares, assets and assistance-in-kind;

“Public Services Contract” has the meaning ascribed to it in the Public Contracts (Scotland) Regulations 2015;

“Value for Money (VFM)” is defined as the optimum combination of whole life costs and quality (or fitness for purpose) to meet the customer's requirements, and can be taken to be largely analogous with "most economically advantageous".

2.2 The FPP Code applies in any situation where the Council decides to fund external organisations other than by means of a transparent procurement process in accordance with the Council’s Contract Rules and Guidance.

2.3 The Council’s Contract Rules provide that contracts with a value of less than £5,000 in total, whilst not requiring to be publicly procured, do need to demonstrate value for money. Similarly there are specific exceptions for larger contracts contained within the Contract Rules. As the FPP Code reflects general principles designed to provide transparency in respect of public spending, the FPP Code is applied in these situations also to provide assurance as to Best Value and VFM considerations.

2.4 Therefore the FPP Code will apply:-

- (i) where the Council provides funding to an external organisation which is a separate legal entity from Council but over which the Council exerts a degree of control or influence by virtue of its constitution or the terms of its funding agreement (such as an ALEO/ Trust arrangement); or
- (ii) where the Council intends to directly award a contract for the supply of education or social care services to an independent supplier because no competition exists in the market; or
- (iii) where the estimated costs of the services are below the EU threshold (all of which are set out in the Contract & Procurement Guidance) and a review has been carried out which has determined that Best Value can be obtained without going to tender; or

[In determining whether the amount is below the EU threshold specific regards must be had to the rules regarding aggregation. Please see [Guidance re Aggregated Values](#)]

- (iv) where the total value of the spend is less than £5,000 (or such other minimum level as prescribed in the Council’s Contract Rules); or

(v) where the Council provides some form of grant or assistance-in-kind (subject to compliance with any state aid rules).

2.5 This Code does not apply where the Council's Contract Rules or other rule of law requires a public procurement process to be followed.

2.6 Subject to 2.4(ii)-(iv) above, under no circumstances should this FPP Code be applied to a situation where the Council is procuring:-

- works or services pursuant to a public works contract;
- any form of professional or consultancy services; or
- the purchase of goods.

In these circumstances, the appropriate procurement route must be followed as set out in the Council's Contract Rules.

(more detailed guidance is contained within the FPP Practitioner Toolkit)

2.7 In reality therefore most spend will be subject to the Council's Contract Rules and these should always be checked in the first instance to see if they apply before considering the application of the FPP Code. If you are unsure you should always seek advice from the Council's Corporate Procurement Team.

2.8 The obligations as regards the governance of public funds do not end with the transfer of funding to the external body. All Council staff who are responsible for the award or payment of public funds to external organisations outside the Council's Contract Rules must follow the processes set out in this FPP Code.

2.9 Attached to this FPP Code is a toolkit to assist those individuals in identifying whether or not the FPP Code applies and how to put the appropriate checking, monitoring and reporting arrangements in place. It also details the specific roles and duties of staff in dealing with FPP arrangements.

2.10 Should Services require any further guidance in relation to funding external organisations, they should contact the Head of Legal and Governance Services.

3 PRINCIPLES OF "FOLLOWING THE PUBLIC POUND"

3.1 As stated above, the original Code sets out basic principles governing FPP arrangements to ensure openness, transparency and adequate accountability. These can be summarised as follows:-

- **PURPOSE:** the Council must be clear about the reasons for their involvement in any external funding arrangement;
- **FINANCIAL REGIME:** the Council must specify clearly the extent of its financial commitment to the external body, including the nature of the financial relationship and the criteria for making and receiving payment;

- **MONITORING**: the Council ensure that there are appropriate and robust financial and performance monitoring and reporting arrangements are in place from the start of the relationship;
- **REPRESENTATION**: the Council should carefully consider its representation on the Board of any external organisation and ensure that Members and Officers understand their roles and responsibilities;
- **LIMITATIONS**: the Council must lay down a timetable for the achievement of its objectives, clearly specify any limits to funding and provisions for terminating the arrangement;
- **ACCOUNTABILITY**: provisions must be made for the Council and its external auditors to have access to the records of the funded body.

(more detailed guidance is contained within the FPP Practitioner Toolkit.)

4 APPLYING THE PRINCIPLES

4.1 In practice therefore it is essential that before any FPP arrangement is entered into:-

- you can clearly link what the external organisation will be providing to an objective, strategy or policy of the Council;
- a risk-based assessment is carried out of the external organisation prior to agreeing funding to ensure the organisation is able to achieve the Council's objectives and that there are no state aid implications arising out the decision to fund the external organisation;
- that an adequate level of checks is carried out on the external organisation before and during any funding, based on the amount of money they are receiving in total from the Council;
- a funding agreement will be reached between the Council and the external organisation prior to any funding being made available, setting out the terms and conditions of the payment;
- a Monitoring Officer from the Council will be appointed to oversee the funding provided to each external organisation;
- the position as regards Elected Member or officer representation on any board or governing body of any external organisation is identified and that roles and responsibilities are fully understood .

(More detailed guidance is contained within the FPP Practitioner Toolkit)

4.2 It is the responsibility of each Director to ensure that expenditure is being correctly categorised under this Code (and is not subject to any procurement rules) and where such expenditure meets the test under this Code, then there is clear accountability for all funds which are provided from their Service budgets.

5 ASSURANCE FRAMEWORK

5.1 The requirement to provide assurance in respect of funding to external organisations does not end at the point of payment being made. Whilst a number of risks will have been identified and addressed prior to funding, a number of different risks will continue or emerge in the course of performance (e.g. non delivery or poor performance of the service, misuse of funds, reputational risk etc. Assurance will therefore be required in respect of the

external organisation's ability to deliver high quality services. The level of assurance required must be reflective of the risks/potential risks that exist.

- 5.2 The purpose of a financial and operational risk assessment is to determine how any changes in income and expenditure will impact upon the external organisation's future viability and operational ability to deliver the necessary outcomes.
- 5.3 This FPP Code applies the principle of proportionality to the assessment of risk and assurance, recognising that different levels of scrutiny will be required depending on;
- the degree, nature and impact of the risks/potential risks identified
 - the level of control/influence which the Council has over the external organisation
 - the level of funding given.
- 5.4 The following matrix will be used to determine the level of risk assessment and assurance required.

FINANCIAL RISK LEVEL	SCORE
Less than £5,000	1
Greater than £5,000 but less than £50,000	2
Greater than £50,000	3
Substantially greater than £50,000 and included in Group Accounts for the Council	4

NON- FINANCIAL RISK LEVEL (OPERATIONAL / REPUTATIONAL)	SCORE
One off grant / subsidy to body for community benefit	1
External organisation - Council has no interest or control	2
External organisation - Council has substantial interest and control	3
External organisation - Council has substantial interest and control and the results of organisation are included in the Council's Group Accounts	4

- 5.5 To assess the level of assurance required select the relevant criteria from both the financial and non-financial risks and add the scores together.

SCORE	ASSURANCE ASSESSMENT LEVEL
1-2	LEVEL 1
3-4	LEVEL 2
5-6	LEVEL 3
7-8	LEVEL 4

(more detailed guidance as to the content of each level of risk assessment is contained within the FPP Practitioner Toolkit.)

- 5.6 Once the financial/ non-financial risks have been assessed and a decision to fund has been made the next stages of the assurance process are:

- to agree clear and transparent contractual arrangements
- to agree a schedule of payments
- to establish regular and robust approval, monitoring and reporting arrangements
- where appropriate, to determine the degree of the Council's representation and participation in the external organisation.

(more detailed guidance is contained within the FPP Practitioner Toolkit.)

6 CENTRAL REGISTER

6.1 It is important that the Council is publicly accountable for how it is spending public funds.

6.2 Under the Council's Contract Rules, details of all contracts entered into as a result of regulated procurement must be entered into a Contract Register. Those arrangements which fall out with the scope of regulated procurement shall be recorded on a central FPP Register. Accordingly the following arrangements will require to be recorded on the FPP Register :

- where the total value of the spend in respect of the services is less than £5,000 (or such other minimum level as prescribed in the Council's Contract Rules); or
- where the Council provides some form of grant or assistance-in-kind (subject to compliance with any state aid rules); or
- where the Council intends to directly award a contract for the supply of education or social care services to an independent supplier because no competition exists in the market, the value of which is less than £50,000; or
- where the estimated costs of the services are below £50,000 and a review has been carried out which has determined that Best Value can be obtained without going to tender; or
- where the Council provides funding to an external organisation which is a separate legal entity from Council but over which the Council exerts a degree of control or influence by virtue of its constitution or the terms of its funding agreement (such as an ALEO/ Trust arrangement).

6.3 Where the FPP Code has been applied because :

- (i) the Council intends to directly award a contract for the supply of education or social care services to an independent supplier because no competition exists in the market; or
- (ii) where the estimated costs of the services are below the EU or other relevant threshold and a review has been carried out which has determined that Best Value can be obtained without going to tender; and
- (iii) the **value is greater than £50,000**

The arrangement shall be recorded on the CONTRACT REGISTER as opposed to the FPP Register.

- 6.4 The FPP Register will be maintained by the Head of Legal & Governance Services. Service Management Teams are required to ensure that the Register is kept up to date with all relevant information.

Version	Summary of Changes	Approved	
V.1	Initial draft 30/04/14	DH	ITI
V1.2	Second draft issued 1/10/14	DH	ITI
V2	Third draft issued 21/11/14	DH	ITI
V3	Fourth draft issued 12/12/14	DH	ITI
V4	Fifth draft issued 17/12/14	DH	ITI
V5	Sixth draft issued 10/04/15		
V6	Seventh draft issued 29/05/15		
V7	Eighth draft issued 24/07/15		
V8	Ninth Draft issued 20/11/2015		
V9	Revisals made following comments from JC and MM. Issued to LS for comment 04/02/2016.		
V10	Further revisals made to reflect changes in Procurement legislation. Issued to MM and LS for comment 30/03/2016		
V11	Revisal made by LS		