

PERTH AND KINROSS COUNCIL**Strategic Policy & Resources Committee****15 June 2016****Following the Public Pound****Head of Legal & Governance Services****PURPOSE OF REPORT**

The purpose of the report is to seek Committee approval for the revised Code of Guidance for Funding External Organisations & “Following the Public Pound”

1. INTRODUCTION

- 1.1 The purpose of the report is to seek approval for the revised Code of Guidance for Funding External Organisations & “Following the Public Pound” (The FPP Code).
- 1.2 The Committee recently received the annual report on the Council’s activity under “Following the Public Pound” [Report 16/47 refers]. The Committee was advised that a comprehensive review of the local Code and other relevant documentation was being carried out to ensure that they are fit for purpose and relevant to the current operational requirements. The timeline for producing the revised Code required to be slightly extended in order to incorporate the requirements of the new procurement legislation which only recently came into force.

2. BACKGROUND

- 2.1 The purpose of the FPP Code is to ensure that there is consistency and transparency in respect of the funding of external organisations who are providing services which might otherwise have been provided by the Council.
- 2.2 The Accounts Commission/CoSLA published a Code of Guidance on Funding External Organisations & Following the Public Pound in 1996 (the original Code) in response to the increasing use by Councils of arm’s length bodies, trusts and companies to deliver services. The basic premise of the Code is that where there is expenditure of public funds, there must be a high degree of control and accountability.
- 2.3 The original Code relies on self-regulation and monitoring through the external audit process. It also recognises the need for Councils to develop their own rules to address their own particular circumstances. This FPP Code is therefore designed to meet the assurance and accountability requirements of this Council.

- 2.4 As part of the Review of Procurement under the Corporate Transformation Programme, officers have undertaken a comprehensive assessment of the governance framework surrounding FPP classification. As a result of this and legislative change with the introduction of the Public Contracts (Scotland) Regulations 2015, officers have identified a number of changes that are required to the FPP classification in order to ensure that the Council not only complies with the relevant regulations, but ensures that the Council achieves best value in discharging its functions.
- 2.5 The Audit Scotland report *“Arm’s Length External Organisations (ALEOs): are you getting it right?”* [2011] sets out 3 delivery vehicles for Council services, which can be broadly categorised as follows:
- 2.5.1 Delivery by local authority using its own resources; or
 - 2.5.2 Delivery by local authority using a special purpose vehicle (ALEO); or
 - 2.5.3 Delivery by means of commercial contract.

3 PROPOSALS

- 3.1 Having carried out a review of the annual FPP arrangements (which fall into categories 2.5.2 and 2.5.3 above), it has become evident that a number of these arrangements do not meet the test of an arm’s length external organisation, due to the Council not having sufficient control or influence over the organisation delivering the service. As a result, at present only Live Active Leisure, Horsecross Arts and the new trust, Culture Perth & Kinross, should be treated as ALEO’s under FPP as per 2.5.2 above.
- 3.2 All other funding arrangements to external organisations will therefore fall into one of two further categories, being grant funding or commercial contracts as set out in paragraph 2.5.3 above.
- 3.3 As regards grant funding arrangements, depending upon the level of spend, there is likely to be little impact as a consequence of the FPP Code beyond more robust risk assessment, approval and monitoring measures.
- 3.4 There is however likely to be a significant impact on those organisations receiving funding in exchange for services to be delivered on behalf of the Council. As these arrangements meet the definition of public services contracts under the Procurement legislation, these will require to be subject to either competition under the 2015 regulations, unless the Head of Legal & Governance Services approves an exception under the Contract Rules.
- 3.5 To ensure a consistent approach to demonstrating best value in respect of our funding of external organisations, where the Contract Rules allow for exceptions to the formal public procurement process (on the basis of level of spend or other prescribed grounds) we are now requiring that in these circumstances, rather than leaving the assurance requirements to the discretion of Services, that we adopt the FPP principles and apply the requirements of the FPP Code in respect of risk assessment, contractual requirements, approval, monitoring and recording. This will embed the

assurance framework more effectively and provide better transparency and accountability.

- 3.6 The FPP Code has also been designed to dovetail with the Council's revised Contract Rules (which are also presently under review) to ensure that there is consistency across the whole spectrum of purchasing and to support more effective supply chain management within the organisation.
- 3.7 It is important that Services recognise and understand that applying the FPP Code is not an alternative to public procurement. There are limited circumstances where the FPP Code can be applied.
- 3.8 It is proposed that where current FPP arrangements have been identified as inappropriate or inadequate in accordance with the new legislation and FPP Code, that support will be given to those services that are affected by the changes from the Council's Corporate Procurement Team and Legal and Governance Services in order to ensure that the Council complies with its duties under the applicable legislation. Any changes will be brought in using a risk-based approach to minimise the impact of transition.
- 3.9 A practitioner Toolkit is also being developed to assist officers in determining whether or not FPP applies and if so, the steps required to assess risk and establish the necessary governance arrangements to provide assurance as regards best value and accountability as regards spend.

4. CONCLUSION AND RECOMMENDATION(S)

- 4.1 The revised FPP Code will ensure that a robust governance model exists for those contractual arrangement which fall within the scope of the FPP Code.
- 4.2 By aligning the FPP Code and the Council's Contract Rules, we will develop a consistent approach to the risk assessment, management and monitoring of the spectrum of contractual arrangements, giving greater transparency across the supply chain.
- 4.3 It is therefore recommended that Committee :
 - i. approve the revised FPP Code;
 - ii. note that the Head of Legal & Governance Services and the Corporate Procurement Manager will work with Service Management Teams to review and where applicable amend current FPP arrangements to ensure that these are compliant with current procurement legislation and the new FPP Code;
 - iii. notes that the outcome of the review of these arrangements will be reported back to Committee in the FPP Annual Report 2016/17.

Authors

Name	Designation	Contact Details
Lisa Simpson	Head of Legal & Governance Services	Llsimpson@pkc.gov.uk

Approved

Name	Designation	Date
John Fyffe	Senior Depute Chief Executive	23 May 2016

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	None
Corporate Plan	Yes
Resource Implications	
Financial	Yes
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	Yes
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	Yes
Risk	Yes
Consultation	
Internal	Yes
External	None
Communication	
Communications Plan	Yes

1. Strategic Implications

Community Plan / Single Outcome Agreement

1.1 None

Corporate Plan

1.2 This report supports all of the Objectives in the Council's Corporate Plan 2013/2018.

2. Resource Implications

Financial

2.1 None

Workforce

2.2 None

Asset Management (land, property, IT)

2.3 None

3. Assessments

Equality Impact Assessment

- 3.1 This report was considered under the Corporate Equalities Assessment Framework and assessed in relation to the Race/Disability/Gender Equalities Assessment. Consequently the following points and actions were identified and are in progress: –

- Direct consultation with Voluntary organisations required
- Further Equality monitoring exercise to be carried out.

Strategic Environmental Assessment

- 3.2 None

Sustainability

- 3.3 None

Legal and Governance

- 3.4 All legal and governance issues are addressed in the main body of the Report.

Risk

- 3.6 None

4. Consultation

Internal

- 4.1 The Policy and Governance Group and staff in Services responsible for Following the Public Pound work have been consulted on the content of this report.

External

- 4.2 None

5. Communication

- 5.1 None

2. BACKGROUND PAPERS

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

3. APPENDICES

- 1 Code of Guidance for Funding External Organisations & “Following the Public Pound”.

