



# Orkney and Shetland Valuation Joint Board



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## Minute

Thursday, 18 November 2021, 11:00.

Microsoft Teams.

### Present:

#### Orkney Islands Council:

Councillors Andrew Drever, Robin W Crichton, David Dawson, Barbara Foulkes and Harvey Johnston.

#### Shetland Islands Council:

Councillors Theo Smith, Alastair Cooper, Allison Duncan, John Fraser and George Smith.

### Clerk to the Board:

- Karen A Greaves.

### In Attendance:

- Colin Kemp, Treasurer to the Board.
- Dennis Stevenson, Assessor and Electoral Registration Officer.

#### Orkney Islands Council:

- John W Mundell, Interim Chief Executive.
- Gavin Mitchell, Head of Legal Services.
- Hazel Flett, Senior Committees Officer.
- Kirsty Groundwater, Press Officer.

#### Shetland Islands Council:

- Jamie Manson, Executive Manager – Finance.
- Jan Riise, Executive Manager – Governance and Law (deputising for Maggie Sandison, Chief Executive, Shetland Islands Council).

### Apology:

- Maggie Sandison, Chief Executive, Shetland Islands Council.

### Declarations of Interest:

- No declarations of interest were intimated.

**Chair:**

- Councillor Andrew Drever, Orkney Islands Council, Convener of the Board.

**1. Welcome and Introduction**

The Convener welcomed everyone to the meeting and reminded members that the meeting was being recorded and broadcast live over the Internet on Orkney Islands Council's website. The recording would also be publicly available following the meeting and available for listening to for 12 months thereafter.

The Convener advised that the Board had another busy agenda, with a number of reports and a range of important matters. He was grateful to officers who had worked extremely hard in preparing and arranging to have presented the reports on time for consideration by the Board.

The Convener also advised that it was timely to thank officers for their efforts and hard work undertaken over the past several months and their dedication was exemplary, all the more remarkable considering the circumstances faced, including the ongoing transition of support services, including the offices of Clerk and Treasurer, from Shetland Islands Council to Orkney Islands Council, the ongoing recruitment difficulties in relation to the position of Assessor and challenges presented by the ongoing pandemic, which had led to prioritising time and resources towards recovery and renewal while, at the same time, ensuring the business of the Board advanced as smoothly as possible. Despite those challenges, the Convener emphasised that the Board remained committed to delivering its duties and priorities and upholding effective governance and transparency in how it carried out its business.

Moving to a less positive matter, the Board was due to consider the external auditor's Annual Audit Report at this meeting. It was with regret and disappointment that Deloitte LLP had not completed their report within the agreed timetable, and the Board looked forward to scrutinising the audit report just as soon as possible when a date could be found in diaries. Through the Clerk, the Convener would be asking Deloitte LLP for an update on progress after the conclusion of this meeting.

**2. Minute of Previous Meeting**

After consideration of the draft Minute of the Meeting of the Board held on 30 September 2021, copies of which had been circulated, the Board:

Resolved, on the motion of Councillor David Dawson, seconded by Councillor Theo Smith, to approve the Minute of the Meeting of the Board held on 30 September 2021, as a true record.

**3. Annual Audit Report 2019/20 – Action Plan – Update**

There had been previously circulated a report from the Clerk providing an update on the action plan arising from the Annual Audit Report for 2019/20.

The Clerk reported that steady progress was being made with the actions arising from the Annual Audit Report for 2019/20, which also linked with the next item, the actions arising from the Governance Review, undertaken as a result of recommendations from the Annual Audit Report. All actions were either marked “blue” as complete or “green” being on track for completion by the target date.

With regard to Action 1, which was complete, the Clerk referred members to the next item on the agenda, which related to the actions arising from the Governance Review.

With regard to Action 2, training for elected members, the Clerk advised that a training session had been arranged with the Improvement Service to be held in January 2022, with consideration being given to a programme of training, including induction for new members, following the Local Government Election in May 2022.

The Clerk advised that the final sentence on the progress/update for Action 4, regarding amending the target date, should have been removed, as the target date was amended at the previous Board meeting.

The Board noted:

**3.1.** The updated Action Plan arising from the Annual Audit Report on the 2019/20 Audit, attached as Appendix 1 to the report circulated.

**3.2.** That a further update on progress, together with actions arising from the Annual Audit for 2020/21, would be presented to the Board at its meeting to be held in March 2022.

#### **4. Governance Review – Action Plan – Update**

There had been previously circulated a report from the Clerk providing an update on the action plan arising from the Governance Review.

The Clerk reported that the review, which had commenced approximately one year ago, resulted in the action plan, with some progress being made, although the process of transition from Shetland Islands Council to Orkney Islands Council remained ongoing. Some of the actions related to training and, referring to the previous item, the Clerk advised that a training session on the Barclay Review was being held on 26 November 2021 and was in members’ diaries, with further training sessions planned. Given the status of actions, together with competing priorities and the ongoing transition process, revised target dates were proposed.

The Board noted:

**4.1.** The updated Action Plan arising from the review of governance arrangements, attached as Appendix 1 to the report circulated.

**4.2.** That a further update on progress would be presented to the Board at its meeting to be held in March 2022.

The Board **resolved**:

**4.3.** That the undernoted action plan target dates be amended as follows:

- Action 1 – from 30 September 2021 to 31 March 2022.
- Action 3 – from 30 October 2021 to 31 March 2022.
- Action 4 – from 30 September 2021 to 31 March 2022.
- Action 5 – from 30 September 2021 to 30 April 2022.
- Action 6 – from 30 October 2021 to 30 April 2022.

## **5. Best Value – Progress Report**

There had been previously circulated a report by the Assessor and Electoral Registration Officer (the Assessor) presenting a progress update, as required by the Board's Best Value Regime, for the reporting period 1 April to 31 October 2021.

The Assessor highlighted the following matters:

- The Electoral Canvass Reform allowed discretion over how the annual canvass was run to be most suitable and effective in the local area. New methods of collecting the information were being trialled, with the new tablet working well in Shetland.
- Facts and figures in relation to postal voting for the Scottish Parliamentary Election, whereby nearly 3,500 postal vote applications were received and processed. The final postal vote allocation was 34.38% for Orkney and 25.8% for Shetland, with the Scotland average being 23.62%, noting that the outer isles in Orkney were fully postal votes.
- The main service priorities relating to Elections and Referendums for the next six month period (October 2021 to April 2022).
- Statistics relating to new entries on the Council Tax list, numbers of outstanding proposals/appeals, which remained very low, and service priorities relating to Council Tax for the next six month period (October 2021 to April 2022).
- Statistics relating to Coronavirus and running roll appeals, noting that the final date for appeal disposal had been extended to 31 December 2022. There was still no decision from Scottish Ministers regarding the potential to follow England's lead in classifying Covid appeals as outwith the definition of a Material Change of Circumstance, which could mean that all Covid based appeals would have no legal foundation.
- Implementation of the Barclay Review on Non-Domestic Rating, with additional costs, for which additional funding of £120k in total had been received, relating to the procurement of a new valuation system and recruitment of two Graduate Apprentice Valuers, one in each area office. As advised by the Clerk earlier in the meeting, a seminar on the Barclay Review would be held on 26 November 2021.
- The challenging timetable in respect of the 2023 revaluation, which would come into effect on 1 April 2023, with a valuation date of April 2022, combined with outstanding appeals.
- Data migration to the new valuation system was complete, with the new system going live on 4 October 2021. Both the old and the new valuation systems would operate in tandem up to the end of March 2022 to offer increased resilience and mitigation of any associated risks.
- The current temporary solution to accommodation at 20 Commercial Road, Lerwick, which, taking account of recent and future recruitment, over time would require a permanent solution.

Jan Riise advised that, as he was not a member of the Board, he wished it recorded in the sederunt that he was deputising for the Chief Executive, Shetland Islands Council. He had a question for the Assessor which may lead to further discussion by members and then reaffirmation of their position. In relation to section 7.4.4 of the Assessor's report, and specifically the reference to Scottish Ministers following England's lead as a means to disposing of appeals, he queried whether the Assessor's professional association was actively looking at this, with a view to pressuring Scottish Ministers to adopt similar legislation. The Board might wish to strengthen the recommendation to the effect that the Assessor, when speaking to the Scottish Assessors' Association and/or the Scottish Government, could speak on behalf of the Board, stating that this position should be actively encouraged.

The Assessor assured the Board that, from discussions at recent meetings of the Scottish Assessors' Association, it was strongly recommended to Scottish Ministers that they hold dialogue with Scottish Government in order for legislation to come forward for Covid appeals to have no legal foundation, similar to the position in England. This was being spearheaded by the Scottish Assessors' Executive.

In response to the Convener, who asked Mr Riise whether he considered this should be minuted, Mr Riise confirmed the Assessor's response demonstrated the matter was being followed through and nothing further required to be minuted.

Councillor Harvey Johnston referred to section 5.1.2 and was delighted to see the use of new technology and the opportunity that this could bring to various areas of the Board's work. He queried whether any additional assistance had been received for the specific pilot, or whether it had been funded from within the Board's normal running costs.

The Assessor advised that, in the run up to the Scottish Parliamentary Election, the Electoral Commission had estimated a 40% increase in postal votes. Accordingly, financial assistance, amounting to £25k, had been received the previous financial year, with any underspend being carried forward, with the funding being used solely for electoral registration purposes. The Assessor had taken the opportunity to utilise the underspend, amounting to £10k, in the current financial year, to roll out the pilot project, which had adequately covered licence fees and tablet purchase.

The Convener asked the Assessor, with the extreme pressure which the system was currently under, whether he was content that resources were sufficient. The Assessor confirmed that, through tabling and the timescale of the Valuation Appeal Committee, there was capacity to address outstanding appeals in tandem with the revaluation process. Although increased staffing levels would come into effect from the following week, there was no doubt the service would still be under pressure; however, should the Scottish Government entertain the pressure to introduction legislation surrounding Covid appeals, that would inevitably provide more capacity.

Following scrutiny of the contents of the report circulated, the Board took assurance.

## **6. Risk Register**

There had been previously circulated a report by the Assessor presenting a revised Risk Register to ensure operations relative to the Board's functions could operate effectively under all assessable and identifiable risks.

The Assessor described the main headings within the Risk Register, with the section on Electoral Registration divided into more detail. The traffic light system was used throughout the Risk Register, along with references to Corporate Risks and Operational Risks for clarity.

The Assessor highlighted that, although the inherent rating might be showing as red or amber, the residual rating indicated the current level of risk, with six risks at an Amber rating. He also referred the Board to the Issues Register, which contained the long term issue of the unsuccessful attempts to recruit to the post of Depute Assessor. This issue was now closed, following the appointment of a Depute Assessor on 22 November 2021. However, a new issue had been added, namely one unsuccessful recruitment exercise to fill the post of Assessor and Electoral Registration Officer.

Councillor Barbara Foulkes commented that the Risk Register was very straightforward, with all on track. Councillor Robin Crichton echoed these comments and requested that, in future, the risk matrix should appear at the beginning of the document, rather than at the end, and that the matrix should identify each risk, for ease of reference.

Following scrutiny of the Risk Register, the Board took assurance.

## **7. Provision of Legal Services**

There had been previously circulated a report by the Clerk considering arrangements for the provision of legal services to the Board.

The Clerk advised that, following recent discussions with external audit and a subsequent review of the Board's formal decisions, it had been highlighted that there was no minuted decision for commissioning legal services, following the transfer of the role of Clerk to the Board from Shetland Islands Council to Orkney Islands Council.

Due to the Law Society of Scotland's Professional Practice Rules, which imposed a general obligation on in-house solicitors to give legal advice only to their employer which, in this case, would be Orkney Islands Council, it was therefore proposed to seek approval to set up a Framework Agreement for the provision of legal services to the Board as soon as practicable. A Framework Agreement would allow for "call off" contracts to be entered into as and when required. As such an agreement would have financial implications, the Clerk would report back to the Board once the procurement exercise had been undertaken.

Councillor Harvey Johnston queried if anything had changed in relation to advice or did Shetland Islands Council previously have delegation noted when they were doing the legal and clerking role for the Board.

Jan Riise advised that, in his former role as Clerk to the Board, he could not deny the fact he was a solicitor, but he never gave legal advice to the Board. On the few occasions when the Board required legal advice, with a recent example being to defend an appeal at the Court of Session, or when external legal advice was required quite quickly, Mr Riise had procured advice through the Chief Executive, Shetland Islands Council, with the legal advice provided to the Council because he could not commission advice to be provided to the Board. Thereafter, the solicitor who provided the advice was asked whether they were comfortable for that legal advice to be shared with the Board.

Mr Riise was grateful to the Clerk for suggesting, in pursuing a tendering exercise, to consult with both himself and Mr Gavin Mitchell, from their background in giving advice to their respective councils, in drawing up the framework. In his opinion, in most areas legal advice would not be required, as the Assessor and his staff were very familiar with the law underpinning their areas of work. Like any organisation, legal advice would be required to support the role of the Clerk, and again, either himself or Mr Mitchell would assist the Clerk in indicating to the Board whether to invoke the Framework Agreement.

Mr Riise concluded that the provision of external legal advice should be proportionate and should not be particularly expensive. There were several large firms who would be readily available and not charge a large retainer, with the Board paying the agreed rate when needed. He did not see the need to have a paid solicitor at every meeting, which would be quite expensive, but the report as written indicated a level of proportionality. The Chief Executives of both Councils would assist the Board in getting to that position.

The Board noted:

**7.1.** The requirement to formally confirm arrangements for legal services to the Board following dialogue with the external auditors.

The Board **resolved**:

**7.2.** To delegate responsibility to the Clerk to commission, as soon as practicable, provision of legal advice to the Board in liaison with the Heads of Legal Services from Orkney Islands Council and Shetland Islands Council via a Framework Agreement.

**7.3.** That the Clerk should submit a report at the earliest opportunity to advise the Board of the outcome of the commissioning process for legal advice.

## **8. Date of Next Meeting**

The Board noted that the next meeting was scheduled for 3 March 2022, to be held in Orkney, COVID-19 restrictions permitting.

Provisional dates for future meetings:

- 23 June 2022.
- 29 September 2022.
- 8 December 2022.

## **9. Conclusion of Meeting**

At 11:34 the Convener declared the meeting concluded.

Signed: