



# Orkney and Shetland Valuation Joint Board



## Minute

Thursday, 20 January 2022, 14:00.

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:

- Dennis Stevenson, Assessor and Electoral Registration Officer (for Items 1 to 4).
- Colin Kemp, Treasurer to the Board.

#### Orkney Islands Council:

- John W Mundell, Interim Chief Executive.
- Gavin Mitchell, Head of Legal Services (for Items 6 and 7).
- Hazel Flett, Senior Committees Officer.
- Kirsty Groundwater, Communications Team Leader (for Items 1 to 4).

#### Deloitte LLP:

- Pat Kenny, Audit Director (for Items 1 to 4).
- Grant Baird, Assistant Manager, Audit and Assurance (for Items 1 to 4).

### 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. Introduction**

The Convener welcomed everyone to the meeting which, in addition to Board members and officers, included Pat Kenny and Grant Baird from the external auditors, Deloitte LLP. An invitation had been issued to both Chief Executives to attend but unfortunately, due to a clash of meetings, the Chief Executive, Shetland Islands Council, had tendered her apologies.

The Convener 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.

**2. Disclosure of Exempt Information**

The Board noted the proposal that the public be excluded from the meeting for consideration of Item 6, as the business to be discussed involved the potential disclosure of exempt information of the class described in the relevant paragraph of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

**3. Annual Report to those charged with Governance**

There had been previously circulated a report by the Treasurer to the Board, presenting the Annual Report to those charged with Governance.

Before moving to the report, the Convener indicated that he felt he had to take some responsibility, in part, for the issues raised in the audit report, namely that it was himself who had originally instigated the involvement of both Chief Executives at a time when he required a steer, as he believed the Board could be heading towards failure to protect statutory duties, which could then have led to responsibility being with the two local authorities to rectify. The Convener made a direct request to both the external auditors and Mr Mundell to better understand where this left the properly appointed officers, which, in his opinion, possibly left them adrift with little opportunity to seek advice through line management, if his understanding was correct.

The Treasurer to the Board advised that the covering report followed normal protocol in presenting the Annual Audit Report for consideration. The main issue to note was the delayed timescales – ordinarily the Annual Audit Report and annual accounts would be considered by the end of September, however the impact of COVID-19 and the additional audit work had resulted in the extended timeline. The main findings of the audit were summarised, together with the key messages. Officers had accepted the findings of the audit report and agreed the action plan.

Mr Pat Kenny did not propose to go through the audit report in detail, but highlighted some main points, including the key messages on page 3 onwards. The public sector audit model had two main dimensions – the first being the financial statements and to certify that they presented a true and fair view, and secondly, the wider scope responsibility in accordance with the Audit Code of Practice.

Mr Kenny was pleased to report that he expected to issue an unmodified clean audit opinion on the financial statements for the year ended 31 March 2021. This was obviously good news and he was impressed by the quality of the deliverables and working papers. Referring to the quality dashboard on page 8, all indicators were green, which was very positive and was an accolade he gave to very few public sector clients. He extended his thanks to the Treasurer and his team for their assistance in that regard.

Moving to the wider scope element of responsibilities, Mr Kenny advised that the audit report did identify some very significant issues for the Board to address, and highlighted the following:

- The lack of a Medium Term Financial Plan.
- Unlawful expenditure relating to the employment of the Assessor, which had subsequently been confirmed by expert legal opinion. Page 29 gave a timeline of events relating to the expenditure, page 30 provided an analysis of the various issues emerging from the expenditure and page 31 detailed the auditors' conclusions that it was unlawful expenditure.
- Lack of oversight and control in relation to changes in payments to the consultant Depute Assessor. An analysis was provided on page 33, with the auditors' conclusion on page 34.

Mr Kenny confirmed that these were significant deficiencies which the Board was required to address, but he was pleased by the reaction of the leadership team in accepting the audit findings, the key messages and the recommendations to address the deficiencies. An action plan, detailed on page 41, had been agreed with the Board's leadership team.

Finally, Mr Kenny confirmed that, during the course of next year's audit, the auditors would follow up on progress with implementation of the recommendations.

Councillor Alastair Cooper raised a procedural point and asked that the minute record the reason why Mr Jan Riise was not permitted to join the meeting. The Convener advised that, given the previous advice that local authorities had very little remit in the work of the Board and, given the matters to be discussed at this meeting, after taking advice, he had requested that only the Chief Executives of both local authorities be invited to attend, with no substitutes. Unfortunately, Ms Sandison had tendered her apologies.

Councillor Robin Crichton advised that, like all audits, there was usually a delay in presenting to the appropriate forum, however he was surprised reading through the audit report that the auditors were commenting on matters which had arisen in September 2021, which was outwith the audit timeframe (1 April 2020 to 31 March 2021). Further, he queried whether the next audit, covering the period 1 April 2021 to 31 March 2022, would include the same level of detail and criticism of the incident.

Mr Kenny confirmed that, as the auditor responsible for signing the accounts, he had to take cognisance of any major events up to the date of signing accounts – that was the key cut off point for governance and leadership type issues, particular in relation to the wider scope element. He confirmed that the following year's audit would not go into the same level of detail, rather they would follow up on progress with implementation of the recommendations.

Councillor Alastair Cooper advised that, although he was not in attendance at the informal gathering held on 6 September 2021, he accepted that he was a Board member and therefore accepted his responsibility. However, he wondered to what extent that should be recorded. Mr Kenny advised that non-attendance did not change any of the relevant issues on which they had instructed expert legal advice.

Councillor Allison Duncan advised that he was very disappointed to see the audit report but took full responsibility as an elected member of the Board. Speaking for himself, he was totally embarrassed with the findings. However, he referred to statements on page 5, under "Leadership", which stated "there were significant difficulties in obtaining sufficient audit evidence to conclude our work on leadership" and under "Best Value", "The VJB has been unable to properly to address these issues and there has been insufficient scrutiny to prevent, or detect and correct these issues at an early stage", which he considered to be very serious.

The Convener advised that the auditor who had commenced the audit process was no longer in the employment of Deloitte LLP but asked Mr Kenny to comment. Mr Kenny confirmed that it had been a difficult process in terms of dealing with the Board leadership, which he fully understood. From their perspective, given the serious nature of the findings, he had some sympathy with the leadership team in that respect. However, he had obtained sufficient evidence to make his judgements and conclusions.

Councillor Allison Duncan responded that he would like further detail as Mr Kenny had provided a generalised response. Mr Kenny advised that he would need to look at the audit file to determine the evidence received, which he was happy to do and would respond in due course. Councillor Duncan accepted that and asked that the detail be provided to all Board members.

The Convener advised that, as part of the audit process, a number of members and officers had received a questionnaire. He was not aware whether everyone had received the same questionnaire.

Mr John Mundell advised that his understanding, bearing in mind that he had only received the audit report when the papers for this meeting had been issued, was that the detail Councillor Duncan required was contained on page 29 of the audit report. He confirmed that, although he too had received a questionnaire, in light of advice from Deloitte LLP that the Chief Executives of the local authorities had no locus in the work of the Board, he had not responded.

The Convener commented that he did find it very confusing, given that last year's audit referred to the substantial increase in involvement in the Board's affairs by the Chief Executives, given the Board was facing significant risk with no leadership in place, which he felt was now contradictory to the findings of this year's audit. Another area of confusion between the two audit reports was where the Board received its advice from; last year's audit mentioned that IT, HR, legal and administrative support was received from Shetland

Islands Council. He now believed that Orkney Islands Council was no longer permitted to provide legal support to the Board.

Councillor Theo Smith requested comment from Mr Kenny, given the Convener's concerns regarding confusion between the two audit reports, which he fully concurred with.

Mr Kenny advised that the current audit report referred to very specific issues in relation to governance of the Board which were not relevant in the previous audit. There were some governance issues in previous years which were picked up and that was the reason for the Improvement Service undertaking an external review of governance arrangements. Accordingly, there was a recurring theme surrounding governance and leadership.

In response to a further question from Councillor Theo Smith as to who could advise the Board, Mr Kenny advised that the Board should appoint its own financial and legal advisers. In the past, it appeared that financial and legal advice was provided by Shetland Islands Council, which transitioned over the course of the year to Orkney, and, in his opinion, that was where that particular expertise would typically be available for a board of this type.

Both the Convener and Councillor Theo Smith maintained that confusion remained, particularly surrounding the provision of legal advice which, it was understood, rightly or wrongly, was provided in-house. Councillor Alastair Cooper reminded the Board of discussion at the previous Board meeting that, if the Board required legal advice, it was contracted from external legal agents – Shetland Islands Council did not provide legal advice direct to the Board. The Convener referred, again, to the audit report for 2019/20 which stated that the Board received support services, including HR, legal and administration, from Shetland Islands Council, at a cost of £29k, hence the ongoing confusion.

Mr Mundell advised that his understanding, and he had learnt a lot through this particular audit which had resulted in him seeking Counsel's Opinion through Orkney Islands Council's Head of Legal Service, was that there were potential issues with Council solicitors providing advice to separate legal entities, such as the Valuation Joint Board, as there was a risk to their practising certificates according to the rules of the Law Society of Scotland. The Board now recognised that risk, dealt with it and actioned accordingly. He had also raised this matter with the Controller of Audit, as he was aware that other Boards adopted the same practice of council solicitors providing advice to their boards. Clearly, for the time being, until the position was fully clarified, Orkney Islands Council was not in a position to provide legal advice direct to the Board and, even if Orkney Islands Council was commissioned to provide that advice, advice would be sought from the Law Society for Scotland. In his opinion, the solution would be for constituent authorities to be able to do so, otherwise the Board would be required to commission external legal advice, which was more expensive even if through a competitive scenario.

Councillor John Fraser commented that it had been made clear that the Chief Executives of the two constituent authorities were not officers of the Board. His understanding was that the Clerk to the Board was not formally contracted as an officer of VJB, but simply the duties of the Clerk were added to their role within the local authority. If the Clerk was not directly contracted by the Board, it then followed that they, also, were not officers of the Board. Accordingly, he sought clarification on the term "leadership" that was alluded to on several occasions in audit report.

The Convener advised that his understanding was that the Clerk and the Treasurer were contracted to the Board but, in doing so, they left behind their local authority remit, with no line management during their Board work.

Mr Mundell advised that this was another area of concern from his perspective and, based on external legal advice received by Orkney Islands Council, by putting council officers into the roles of Treasurer or Clerk, the councils were inadvertently creating the unsatisfactory position where that officer was neither an employee of the council, where line management support and a duty of care could be fulfilled, nor an employee of Board. This had also been raised with the Controller of Audit as it was replicated elsewhere and therefore a solution was required nationally.

Councillor John Fraser responded that he was delighted Mr Mundell acknowledged and shared his concerns, which he had raised previously, following the resignation of the previous Clerk, that the roles of Clerk and Treasurer to the Board were not incorporated within the terms and conditions and roles and responsibilities of individuals. A resolution was clearly required, in order that the present incumbents and any successors were not placed in such an invidious position in the future.

The Convener asked Mr Kenny to clarify, with the concern that the Chief Executives of the constituent authorities had no locus in the business of the Board, by allowing Mr Mundell to comment, this would not be raised in next year's audit. Mr Kenny gave assurance that this would not be raised in future audits. In fact, he had held various email conversations with Mr Mundell and had also set up the meeting with the Controller of Audit as he, too, shared the concerns regarding duty of care and line management. However, he had noted that council officers providing services to other Boards had an element of FTE (full-time equivalent) clearly defined in their contract, which was discussed and agreed with the relevant employee, to ensure sufficient time was allocated to carry out their duties effectively. Mr Kenny confirmed that the term "leadership" in the audit report referred to the Assessor, the Clerk and the Treasurer.

Mr Mundell confirmed that he did recall Councillor Fraser previously raising the issue and, when Orkney Islands Council took over the support role, he did factor the positions of Clerk and Treasurer into the job descriptions of the relevant officers. However, following on from lessons learned through the audit process and given that the delegation was not established by the Council but by statute, the way forward was for the Board to amend its constitution. Mr Mundell still had concerns, particularly in exercising line management, support and advice and a duty of care to employees put into those positions, who were cast adrift in the current circumstances, which was totally unacceptable.

Councillor David Dawson advised that, although it was a disturbing audit report which made for uncomfortable reading, he referred to the Convener's opening remarks where he made it clear he shouldered the blame to some degree for the situation the Board found itself in. Notwithstanding Mr Kenny's definition and Mr Mundell's recognition of that, leadership was vested in the entire Board and he echoed Councillor Duncan's earlier remarks that the entire Board had to share some degree of blame. At the time of the informal meeting on 6 September 2021, the Board was facing significant and serious challenges which, if they had become reality, would have seen the Board facing a far worse crisis than today with the audit report. He believed that the leadership team did what they believed at the time was required, the Board agreed and were more than happy to comply and therefore become complicit. However that had raised two questions –

clarifying the roles and responsibilities of local authority officers but more importantly, after May 2022, there would more than likely be significant changes to the Board membership, as there was no guarantee that any of the existing incumbents would be re-elected and/or reappointed. Therefore it was very important that training was provided on the legal roles and responsibilities of Boards and their members, even if that required days of training, because it was clear there were huge legal responsibilities, particularly when terms such as ultra vires and unlawful were mentioned in audit reports. He concluded by advising the Convener that he should not be unduly harsh on himself as Chair, nor the leadership team, as all Board members should also take an element of responsibility.

The Convener concurred that training was essential and that existing members should be asked what was required in order to build a programme of relevant training for new members.

Councillor Barbara Foulkes also felt culpable as a Board member but, as with previous comments, she felt the Board had done the best they could under difficult circumstances. It was now time to move on; the audit report was hard reading, but also fair and honest, and lessons could be learned. In the past, as a member of the Board, Councillor Foulkes felt that she had always received good advice from both the current and the previous Clerk. She was not sure if the Board received legal guidance but she felt legally guided and secure. She was very concerned that the Board did not have in place a system that allowed that to happen with a degree of confidence – this was a question which was wider than this Board, but may be as simple as reviewing its constitution, which she strongly suggested should be done at the next meeting, as it was a matter of urgency going forward and for the leadership.

Councillor Alastair Cooper suggested there were two main issues. The first related to the consultant Depute Assessor's salary being increased regularly, which the Board did not take cognisance of and perhaps should have and, to some extent, carry some responsibility. The second issue, which again was probably done with the best of intent, was officers taking action without the necessary minute to authorise those actions. In relation to the issue of the Clerk providing administrative advice to the Board, that was not necessarily legal advice. He was more than happy with the administrative advice received from Shetland and very happy with the administrative advice now, with one exception, namely the informal gathering. One thing which the Board needed to do was to separate administrative and legal advice; there may be occasion when the Board required legal advice and better guidance and clarity was required.

Councillor Allison Duncan took cognisance of what had been said by previous members and advice from officers. However, he was keen to share the good news story, where Mr Kenny had made it clear that the Board was outstanding in the financial side of its business and he wanted to congratulate all the staff and members involved in getting to that position. Likewise, he took cognisance of members' comments regarding the wider audit report; it was important that the Board move forward and leave errors behind. He asked the Treasurer what the timescale was for presenting for the Medium Term Financial Plan. The Treasurer confirmed that the target date was the end of March 2022 and it was still proposed to submit the draft Plan to the next meeting of the Board.

Councillor John Fraser queried whether the potential review of the constitution, which could impact on the make-up of the Board, the provision of support services, including administrative, legal and financial services, and how they were secured would mean that the Treasurer would not be in a position to formulate the Medium Term Financial Plan. The Treasurer confirmed that he did not see those issues affecting the drafting of the Medium Term Financial Plan.

Mr Mundell commented that he was assured by progress being made by the Board and the actions of the leadership team, given the number of successes, including the new pay and grading model, an independent review of governance, provision of some initial training, with a programme being developed, a performance reporting framework and a more structured approach to clerking of meetings to support the effective working of the Board. Although the Board should not lose sight of the serious issues identified in the audit report, he was assured and confident that the Board would move those forward, relying on committed public servants doing their best in difficult circumstances to deliver for the Board and the communities they were here to serve.

The Convener thanked members and officers for comments made. He honestly believed that no one had deliberately tried to circumvent due governance. The audit was all about process; most importantly at that time there was a keenness to find a way forward in the interim period and continue to provide statutory services until such time as a successful appointment was made and a handover achieved. He was sure everyone felt bruised by the audit, however, it was time to move forward and learn from the past. The action plan, which had been agreed by officers, would be addressed and implemented accordingly. He took the opportunity to thank officers for assisting the Board in progressing the actions previous audit reports and governance review and also thanked Mr Kenny and Mr Baird for their time and patience in getting the Board to this point.

On the motion of Councillor Allison Duncan, seconded by Councillor David Dawson, the Board noted:

**3.1.** That Deloitte LLP, as the Board's external auditor, had concluded its audit of the Orkney and Shetland Valuation Joint Board's Annual Accounts for the year ended 31 March 2021.

**3.2.** That Deloitte LLP expected to provide an unmodified audit opinion on the Orkney and Shetland Valuation Joint Board's Annual Accounts for the year ended 31 March 2021.

**3.3.** That an unmodified opinion meant that the Annual Accounts had been properly prepared in accordance with applicable law, accounting standards and other reporting requirements.

**3.4.** That Deloitte LLP had initially deemed it suitable to apply the 'small body' clause to the audit, based on their updated understanding of actions taken to address issues identified in 2019/20, when the 'full' wider scope audit was applied.

**3.5.** That, towards the conclusion of the 2020/21 audit, the scope of the audit was expanded, in consultation with Audit Scotland, as Deloitte LLP became aware of information which indicated specific risks existed in relation to leadership and procurement. The audit work 'small body' clause considered the following:

- Appropriateness of the disclosures in the governance statement.



- The financial sustainability of the Board and the services that it delivers over the medium to longer term.
- Following up of prior year conclusions within financial management, governance and transparency and value for money.
- The specific risks identified in relation to leadership and procurement.

**3.6.** That, during the course of the audit, a number of presentational and monetary adjustments within the financial statements were identified, which had been adjusted in the final accounts.

**3.7.** The Orkney and Shetland Valuation Joint Board's Letter of Representation to Deloitte LLP in connection with its audit of the financial statements of the Orkney and Shetland Valuation Joint Board for the year ended 31 March 2021, attached as Appendix 1 to the report circulated.

**3.8.** The Annual Audit Report to the Board and the Controller of Audit in respect of the Orkney and Shetland Valuation Joint Board's Annual Accounts, attached as Appendix 2 to the report circulated.

#### **4. Annual Accounts**

There had been previously circulated a report from the Treasurer to the Board presenting the final Annual Accounts for financial year 2020/21.

The Treasurer advised that the draft accounts were approved on 24 June 2021. The main financial statements remained unchanged during the audit process. The main changes were in the Governance Statement and the Management Commentary. Section 4 of his report set out the main issues in finalising the Annual Accounts, which all related to the points raised in the audit report.

The financial outturn position as at 31 March 2021 was an overall underspend of £98,624 against a revised budget for 2020/21, which was mainly attributed to staff costs, with the post of Depute Assessor remaining vacant for the year, together with additional grant funding received, which was offset by the consultant Depute Assessor services. As stated previously, the accounts would receive an unmodified audit opinion.

Referring to the Governance Statement, the Treasurer advised that the draft Accounts had indicated compliance with the good governance principles. However, in light of the audit findings, the Governance Statement now indicated non-compliance in a number of areas. The audit findings had been accepted and officers had agreed an action plan to address the recommendations.

The Treasurer concluded by highlighting to the Board the Conclusion as set out on page 17 of the final Annual Accounts.

Councillor Alastair Cooper queried whether the audit fee had increased and how it would be financed. Mr Kenny understood that the audit fee had been fixed, with the increase in cost relating mainly to the provision of external legal advice, which was a one-off cost. The audit fee for the following year would revert to the normal fee. The Treasurer confirmed that the audit fee would fall into the new financial year and would initially be managed within the current budget.

The Board noted:

**4.1.** That the Local Authority Accounts (Scotland) Regulations 2014 required the Board to consider and approve an audited set of accounts, including an annual governance statement, by 30 September each year, and publish the accounts on a website by 31 October.

**4.2.** That, in terms of the Coronavirus (Scotland) Act 2020, the deadline for publication of final accounts could be extended by two months, if required, from 31 October 2021 to 31 December 2021.

**4.3.** That, following identification of areas of non-compliance in relation to the Annual Governance Statement, comprising pages 9 to 18 of the Annual Accounts, approval was given to delay publication beyond the deadline of 31 December 2021.

**4.4.** The management commentary, comprising pages 1 to 8 of the Annual Accounts, attached as Appendix 1 to the report circulated, which provided an overview of the most significant matters reported in the Annual Accounts for financial year ended 31 March 2021, with the key facts and figures summarised at section 4.3 of the report.

On the motion of Councillor Robin Crichton, seconded by Councillor David Dawson, the Board **resolved**:

**4.5.** That the Annual Accounts for financial year 2020/21, as submitted, be approved.

## **5. Exclusion of Public**

On the motion of Councillor Andrew Drever, seconded by Councillor Robin Crichton, the Board resolved that the public be excluded from the remainder of the meeting, as the business to be considered involved the disclosure of exempt information of the class described in the relevant paragraph of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended..

## **6. Staffing Matters**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 7A of the Act.

There had been previously circulated a report from the Clerk to the Board addressing staffing matters arising from the Annual Audit Report for 2020/21.

The Board noted:

**6.1.** That the 2020/21 annual audit report set out the findings of External Audit in relation to the events leading up to the report entitled "Recruitment Matters" considered by the Board on 30 September 2021.

**6.2.** The audits findings that the report, entitled "Recruitment Matters" considered by the Board on 30 September 2021, did not contain all the information about the extent of the actions already taken since the informal meeting on 6 September 2021.

**6.3.** The actions taken by the Clerk between the informal meeting on 6 September 2021 and the formal meeting of the Board on 20 January 2022.

The Board **resolved**:

**6.4.** That the Clerk should issue a revised contract to the Assessor/Electoral Registration Officer.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **7. Urgent Item**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 7A of the Act.

The Clerk advised the Board that, after taking advice, it was considered that the Recruitment Panel did not have the sufficient level of delegation to make an appointment to the post of Assessor/Electoral Registration Officer. Accordingly, it was proposed to schedule a meeting of the Board on 31 January 2022, following interviews for the post, to enable the Board to consider the recommendation from the Recruitment Panel.

The Board noted the position and agreed with the proposed course of action.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **8. Conclusion of Meeting**

At 15:26 the Convener declared the meeting concluded.

Signed: