

Item: 8

Orkney and Shetland Valuation Joint Board: 18 November 2021.

Provision of Legal Services.

Report by Clerk to the Board.

1. Purpose of Report

To consider the arrangements for the provision of Legal Services to the Orkney and Shetland Valuation Joint Board.

2. Recommendations

The Board is invited to note:

2.1.

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

It is recommended:

2.2.

That the Board delegates 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.

2.3.

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.

3. Provision of Legal Services

3.1.

Following a recent request by External Audit for legal advice, and a subsequent review of the Board's formal decisions, it has been highlighted that there is 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 on 28 September 2020.

3.2.

On the appointment of the Clerk, whilst the minute reflects the discussion that took place noting that normally the Clerk would be responsible for arranging legal advice/support and that, as the proposed Clerk was not legally qualified, it was indicated that this provision would be from Orkney Islands Council's (OIC) Legal Services. However no decision to that effect was made by the Board and no agreement was concluded between the Board and OIC. OIC Legal Services have not been providing legal advice to the Board.

3.3.

There is a significant concern about the prospect of setting up an arrangement for Orkney Islands Council to provide legal advice to the Board because of the Law Society of Scotland's Professional Practice Rules which impose a general obligation on in-house Solicitors to give legal advice only to their employer, which in this case would be OIC, and to avoid potential conflicts of interest. It is important to note that such an arrangement would have to be approved in advance by the Law Society of Scotland to ensure that this did not place Orkney Islands Council's Solicitors at risk of breaching their professional conduct duties and there is no guarantee that such approval would be granted in light of the potential conflict of interest that would exist between the two roles. On the basis of the Board's formal decisions thus far, the External Audit team is therefore unable to engage OIC Legal Services to provide independent legal advice to their audit.

3.4.

Therefore to ensure independence of advice and remove any challenge of conflict, it is deemed appropriate to seek formal approval from the Board 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 advice is required.

4. Financial Implications

There will be an additional cost from the external auditors for legal advice relating to the current audit, and thereafter, subject to approval to commission a Framework Agreement for ongoing legal advice for the Board as and when required, there will be financial implications arising directly from putting in place the Framework Agreement. The costs will not be known until after the tendering process is complete and this will be the subject of a future report to the Board.

5. Legal Aspects

The legal implications are contained within the body of this report.

6. Contact Officer

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