

Minute

Policy and Resources Committee

Tuesday, 18 June 2019, 10:30.

Council Chamber, Council Offices, School Place, Kirkwall.



Present

Councillors James W Stockan, W Leslie Manson, Stephen G Clackson, Alexander G Cowie, Norman R Craigie, Robin W Crichton, David Dawson, Andrew Drever, Steven B Heddle, J Harvey Johnston, Rachael A King, John T Richards, Stephen Sankey, John A R Scott, Gwenda M Shearer, Graham L Sinclair, Magnus O Thomson, Owen Tierney, Duncan A Tullock and Kevin F Woodbridge.

Clerk

- Karen Greaves, Head of Executive Support.

In Attendance

- Gavin Barr, Executive Director of Development and Infrastructure.
- Gillian Morrison, Executive Director of Corporate Services.
- Gareth Waterson, Head of Finance.
- Peter Diamond, Head of Education (Leisure, Culture and Inclusion).
- Hayley Green, Head of IT and Facilities.
- Andrew Groundwater, Head of HR and Performance.
- Scott Hunter, Head of Children and Families and Criminal Justice and Chief Social Work Officer.
- Gavin Mitchell, Head of Legal Services.
- Paul D Maxton, Programme Manager, Our Islands Our Future (for Items 4.2 to 17).
- Lorna Richardson, Strategic Policy and Projects Manager (for Items 4.2 to 8).
- Anna Whelan, Strategy Manager (for Items 1 to 11).
- Hazel Flett, Senior Committees Officer.

Observing

- Brian Archibald, Head of Marine Services, Engineering and Transportation (for Items 1 to 4).
- Jayne Venables, Islands Deal Project Manager. (for Items 4.2 to 8).
- Andrew Hamilton, Performance and Best Value Officer (for Items 1 to 7).

Apology

- Councillor Barbara Foulkes.

Chair

- Councillor James W Stockan.

1. Disclosure of Exempt Information

The Committee noted the proposal that the public be excluded from the meeting for consideration of Items 13 to 16, as the business to be discussed involved the potential disclosure of exempt information of the classes described in the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

2. Corporate Charging Consultative Group

After consideration of a report by the Chief Executive, copies of which had been circulated, and after hearing a report from the Head of Executive Support, the Committee:

Noted:

2.1. That, on 14 May 2019, the Policy and Resources Committee requested that the constitutional arrangements of the Corporate Charging Consultative Group be reviewed.

2.2. The existing constitutional arrangements of the Corporate Charging Consultative Group as follows:

- Chair, Policy and Resources Committee.
- Vice Chair, Policy and Resources Committee.
- Six other members.

2.3. The proposal that, as the Corporate Charging Consultative Group was integral to the budget setting process, the constitutional arrangements be amended to include representation from the four service Committees.

2.4. That, as the term of this Council was five years, it was proposed that appointments to the Corporate Charging Consultative Group should last for the remainder of the term of this Council, namely for three years until May 2022.

Councillor Robin W Crichton, seconded by Councillor W Leslie Manson, moved that membership of the Corporate Charging Consultative Group should comprise the following:

- Chair, Policy and Resources Committee.
- Vice Chair, Policy and Resources Committee.
- Chair, Development and Infrastructure Committee.
- Vice Chair, Development and Infrastructure Committee.
- Chair, Education, Leisure and Housing Committee.
- Vice Chair, Education, Leisure and Housing Committee.
- Chair, Orkney Health and Care Committee.
- Vice Chair, Orkney Health and Care Committee.

Councillor David Dawson, seconded by Councillor John A R Scott, moved an amendment that membership of the Corporate Charging Consultative Group should comprise the following:

- Vice Chair, Policy and Resources Committee.
- Vice Chair, Development and Infrastructure Committee.
- Vice Chair, Education, Leisure and Housing Committee.
- Vice Chair, Orkney Health and Care Committee.
- Three other members.

The result of a recorded vote was as follows:

For the Amendment:

Councillors David Dawson, Steven B Heddle, Stephen Sankey, John A R Scott, Owen Tierney and Duncan A Tullock (6).

For the Motion:

Councillors Alexander G Cowie, Norman R Craigie, Robin W Crichton, Andrew Drever, J Harvey Johnston, Rachael A King, W Leslie Manson, John T Richards, Gwenda M Shearer, Graham L Sinclair, James W Stockan, Magnus O Thomson and Kevin F Woodbridge (13).

The Committee thereafter resolved, in terms of delegated powers:

2.5. That membership of the Corporate Charging Consultative Group should comprise the following:

- Chair, Policy and Resources Committee.
- Vice Chair, Policy and Resources Committee.
- Chair, Development and Infrastructure Committee.
- Vice Chair, Development and Infrastructure Committee.
- Chair, Education, Leisure and Housing Committee.
- Vice Chair, Education, Leisure and Housing Committee.
- Chair, Orkney Health and Care Committee.
- Vice Chair, Orkney Health and Care Committee.

2.6. That appointments to the Corporate Charging Consultative Group should be for the remainder of the term of this Council, namely for three years to May 2022.

3. Innovation Fund Consultative Group

After consideration of a report by the Chief Executive, copies of which had been circulated, the Committee:

Noted:

3.1. The existing constitutional arrangements of the Innovation Fund Consultative Group as follows:

- Vice Chairs of Service Committees.
- Three other members.

3.2. That, on 14 May 2019, the Policy and Resources Committee deferred making appointments to the Innovation Fund Consultative Group to enable the Vice Chairs of the Service Committees to be elected.

3.3. That the following appointments had now been confirmed:

- Vice Chair, Policy and Resources Committee – Councillor W Leslie Manson.
- Vice Chair, Development and Infrastructure Committee – Councillor Andrew Drever.
- Vice Chair, Education, Leisure and Housing Committee – Councillor Alexander G Cowie.
- Vice Chair, Orkney Health and Care Committee – Councillor Kevin F Woodbridge.

3.4. That, as the term of this Council was five years, it was proposed that appointments to the Innovation Fund Consultative Group should last for the remainder of the term of this Council, namely for three years until May 2022.

The Committee resolved, in terms of delegated powers:

3.5. That, in addition to the Vice Chairs of the Service Committees noted at paragraph 3.3 above, the following additional members be appointed to the Innovation Fund Consultative Group:

- Councillor Norman R Craigie.
- Councillor Stephen Sankey.
- Councillor Magnus O Thomson.

3.6. That appointments to the Innovation Fund Consultative Group should be for the remainder of the term of this Council, namely for three years to May 2022.

4. Performance Monitoring

4.1. Chief Executive's Service

After consideration of a report by the Chief Executive, copies of which had been circulated, and after hearing a report from the Head of Executive Support, the Committee:

Scrutinised:

4.1.1. The performance of the Chief Executive's Service for the reporting period 1 October 2018 to 31 March 2019, as set out in sections 3 to 5 and Annexes 1 and 2 of the report by the Chief Executive, and obtained assurance.

The Committee resolved to **recommend to the Council**:

4.1.2. That the undernoted actions, that had been progressed to completion, be removed from the Chief Executive's Service Service Plan:

- 01 – Review of Audiocasting – Consider options for expanding the audiocasting system to all committee meetings and undertake a review of the audiocasting system hardware and software.
- 06 – Customer Services – Introduce Customer Services Standards across the Council.
- 08a - Councillor Training – With elected members and members of the Senior Management Team, carry out a review of the current Councillors Induction Programme to identify any gaps in the programme, and/or any areas where development or improvement could be made.
- 09 – Communication Strategy – Communication Strategy Action Plan to be developed in consultation with the Member / Officer Working Group.
- 11a – Investment Strategy – Review the strategy for the OIC Pension Fund.
- 11b – Investment Strategy – Review the Investment Strategy for the Strategic Reserve Fund.
- 13 – Long-term Financial Plan – Draft a long-term Financial Plan to assist the Council in developing its budget process.

4.1.3. That the Chief Executive's Service Risk Register, attached as Appendix 1 to this Minute, be approved.

4.2. Corporate Services

After consideration of a report by the Executive Director of Corporate Services, copies of which had been circulated, the Committee:

Scrutinised:

4.2.1. The performance of Corporate Services for the reporting period 1 October 2018 to 31 March 2019, as set out in sections 3 to 5 and Annexes 1 and 2 of the report by the Executive Director of Corporate Services, and obtained assurance.

The Committee resolved to **recommend to the Council:**

4.2.2. That the undernoted actions, that had been progressed to completion, be removed from Corporate Services' Service Plan:

- 01 – General Data Protection Regulation – Prepare for the General Data Protection Regulation coming into law in Summer 2018.
- 07 – Alcohol Licensing Policy – Develop and publish a Statement of Alcohol Licensing Policy.
- 14 – Participation Requests – Implement the Council's new Participation Requests Policy and publish the Council's first statutory annual report.
- 16 – Equality Outcomes – Review and develop a new set of Equality Outcomes for the Council.
- 18 – Best Value – Co-ordinate the Council's Best Value Improvement Plan.
- 23 – Video Conferencing Facilities – Review usage of video-conferencing facilities across the Council.

4.2.3. That Corporate Services' Risk Register, attached as Appendix 2 to this Minute, be approved.

4.3. Council Delivery Plan

After consideration of a joint report by the Chief Executive and the Executive Director of Corporate Services, copies of which had been circulated, the Committee:

Scrutinised:

4.3.1. Progress made in respect of the targets within the Council Delivery Plan 2018 to 2023, for the reporting period 1 October 2018 to 31 March 2019, as set out in Annex 1 to the joint report by the Chief Executive and the Executive Director of Corporate Services, and took assurance.

The Committee resolved to **recommend to the Council:**

4.3.2. That the undernoted actions, that had been progressed to completion, be closed, while continuing to be referenced in future Council Delivery Plan monitoring reports:

- Page 16 – 2.15 – We will embed a reablement focussed approach in our home care service to ensure that we are working with people who receive the service to maximise their independence and ability to retain their skills and abilities as far as possible.
- Page 16 – 2.16 – We will support people with disability into purposeful activities such as education / training employment or volunteering.
- Page 21 – 3.7 – We will review trust options for sports, leisure and learning.
- Page 47 – BV1c – Develop a long-term financial plan for the ten-year period 2018 to 2028.
- Page 51 – BV5c – Review the Orkney Partnership's performance management and reporting procedure to ensure that it is focused on the Partnership's strategic priorities and outcomes.

Councillor Stephen G Clackson joined the meeting during discussion of this item.

5. Local Government in Scotland: Challenges and Performance

After consideration of a report by the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Head of HR and Performance, the Committee:

Noted:

5.1. The national audit report, Local Government in Scotland: Challenges and Performance 2019, published by Audit Scotland in March 2019, attached as Appendix 1 to the report by the Executive Director of Corporate Services, which provided a high-level, independent view of the challenges facing councils in Scotland, how councils were responding to tightening budgets and how this had affected services.

5.2. The key messages contained within the national audit report, details of which were summarised in section 5 of the report by the Executive Director of Corporate Services.

6. Participation Requests and Community Asset Transfer Requests

After consideration of a report by the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Head of IT and Facilities, the Committee:

Resolved to **recommend to the Council** that the annual report in respect of Participation Requests and Community Asset Transfer Requests, for the period 1 April 2018 to 31 March 2019, attached as Appendix 3 to this Minute, be approved for publication on the Council website.

7. Orkney Public Consultation Group – Orkney Opinions

After consideration of a report by the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Strategy Manager, the Committee:

Noted:

7.1. That, in July 2018, the Council agreed that Orkney Opinions, the Orkney public consultation group, be continued for a further year, to 31 March 2019, following which the Executive Director of Corporate Services should submit a further report, to the Policy and Resources Committee.

7.2. Evaluation of the second year of Orkney Opinions, as detailed in section 4 of the report by the Executive Director of Corporate Services .

7.3. That resources could be made available within Corporate Services to continue operation of Orkney Opinions for a further year to 31 March 2020.

The Committee resolved to **recommend to the Council**:

7.4. That Orkney Opinions be continued for a further year to 31 March 2020.

7.5. That, subject to sufficient staffing resource being available to support the public consultation group, as informed by the budget setting process for 2020 onwards, Orkney Opinions should thereafter continue beyond 31 March 2020.

8. Islands Deal – Progress Report

After consideration of a joint report by the Chief Executive and the Executive Director of Development and Infrastructure, copies of which had been circulated, and after hearing a report from the Strategic Policy and Projects Officer, with reference to the Minute of the Meeting of the Policy and Resources Committee held on 25 September 2018, paragraph 9, the Committee:

Noted:

8.1. That the Chief Executive, in consultation with the Leader and Depute Leader, continued to negotiate and progress, for Orkney Islands Council's interest, a Growth Deal for the Islands for discussion with the Scottish and UK Governments.

8.2. That Growth Deals were the UK and Scottish Governments' stated vehicles for adopting strategic approaches to improving regional economies and that their intent was to tackle economic barriers and maximise opportunities to drive local, regional and national economic growth.

8.3. Progress towards an announcement of a Growth Deal for the Islands, as set out in section 3 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure.

8.4. The proposed strategy and approach towards finalising the content of the Islands Deal, in particular with regard to the Orkney components, as set out in section 4 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure.

8.5. The process for elected member engagement, as outlined in section 4.4 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure, to finalise the next stage of the Islands Deal proposal.

The Committee resolved to **recommend to the Council:**

8.6. That the eight principles detailed below be adopted as the basis for guiding the Orkney contribution to the next stage of the Islands Deal proposal document:

- The Islands Deal project proposals that are identified must contribute to the core agenda of the Islands Deal in terms of transformational change to re-balancing population and/or economic prosperity.
- The Islands Deal project proposals that are identified clearly reflect UK and Scottish Government objectives, including their clearly expressed desire to respond to the declared climate emergency, and hence have the best chance of ensuring their buy-in and support, and maximising financial support.
- It is recognised that the Islands Deal is not the only funding source for Orkney project opportunities and projects must be assessed in terms of their fit with Islands Deal priorities and likely timeframes for release of funding. This could result in projects seeking alternative sources of more appropriate funding, if necessary, and in changes over time to the list of projects.
- Projects should look to develop innovative approaches to intractable problems, achieve strategic objectives and add value to existing approaches. They cannot be "business as usual".
- Projects should maximise opportunities for additional income to Orkney from both UK and Scottish Governments, and private and other public sector agencies.
- The Islands Deal proposal must present a series of projects which maximise the identified "Islands Advantage" and are transformational for the joint Island group of Orkney, Shetland and the Western Isles on a broadly parallel and equal basis, albeit not necessarily a simple 3-way split of available funding.
- The benefit of projects should be assessed on their projected outcomes and ability to achieve strategic objectives, not just in terms of their capital cost.
- The suite of projects which make up the Deal could be subject to change as the Deal progresses, circumstances change and further evidence is generated with regard to the best opportunities for addressing the strategic objectives of the Deal.

8.7. That powers be delegated to the Chief Executive, in consultation with the undernoted members, to finalise the Orkney contribution to the Islands Deal proposal document for submission to the Scottish Government and UK Government:

- Leader.
- Depute Leader.
- Chair, Development and Infrastructure Committee.
- Chair, Education, Leisure and Housing Committee.
- Chair, Orkney Health and Care Committee.

9. Police and Fire Sub-committee

After consideration of the draft Minute of the Meeting of the Police and Fire Sub-committee held on 28 May 2019, copies of which had been circulated, the Committee:

Resolved, on the motion of Councillor Andrew Drever, seconded by Councillor David Dawson, to approve the Minute of the Meeting of the Police and Fire Sub-committee held on 28 May 2019, attached as Appendix 4 to this Minute, as a true record.

10. Human Resources Sub-committee

After consideration of the draft Minute of the Meeting of the Human Resources Sub-committee held on 30 May 2019, copies of which had been circulated, the Committee:

Resolved:

10.1. On the motion of Councillor W Leslie Manson, seconded by Councillor John T Richards, to approve the Minute of the Meeting of the Human Resources Sub-committee held on 30 May 2019 as a true record.

The Committee resolved to **recommend to the Council**:

10.2. That the recommendation at paragraph 3.1 of the Minute of the Meeting of the Human Resources Sub-committee held on 30 May 2019, attached as Appendix 5 to this Minute, be approved.

11. National Islands Plan and Island Communities Impact Assessments

After consideration of a report by the Chief Executive, copies of which had been circulated, and after hearing a report from the Programme Manager, Our Islands Our Future, the Committee:

Noted:

11.1. That the Scottish Government had published a consultation on the National Islands Plan and Island Communities Impact Assessments, seeking the views of interested stakeholders, for which responses were required by 6 July 2019.

11.2. The draft response, attached as Appendix 1 to the report by the Chief Executive, which would form the basis of the Council's response to the consultation on the National Islands Plan and Island Communities Impact Assessments.

The Committee resolved to **recommend to the Council:**

11.3. That powers be delegated to the Chief Executive, in consultation with the Leader and Depute Leader, to finalise the response, referred to at paragraph 11.2 above, having regard to any comments raised by members, and thereafter to submit the response, on behalf of the Council, to the Scottish Government by the deadline of 6 July 2019.

12. Exclusion of Public

On the motion of Councillor James W Stockan, seconded by Councillor W Leslie Manson, the Committee resolved that the public be excluded for the remainder of the meeting, as the business to be considered involved the disclosure of exempt information of the classes described in the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

13. Orkney Islands Local Marine Asset Management and Local Governance Pilot Scheme

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 9 of Part 1 of Schedule 7A of the Act.

After consideration of a joint report by the Chief Executive and the Executive Director of Development and Infrastructure, copies of which had been circulated, with reference to the Minute of the Meeting of the Policy and Resources Committee held on 25 September 2018, paragraph 11, the Committee:

Noted:

13.1. That, as the Stage 1 application to Crown Estate Scotland in respect of the Orkney Islands Local Marine Asset Management and Local Governance Pilot Scheme was successful, a Stage 2 application, in the form of a Business Plan, attached as Appendix 1 to the joint report by the Chief Executive and the Executive Director of Development and Infrastructure, was submitted to Crown Estate Scotland by the revised deadline of 31 March 2019.

13.2. That, on 10 June 2019, Crown Estate Scotland confirmed that the Council's Stage 2 application had been granted "interim preferred project status" by its Board, which had subsequently been confirmed by Scottish Government.

13.3. That the Council's application would proceed to "preferred project status" once the key issues identified during the Stage 2 assessment process, detailed in section 4.3 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure, had been clarified.

13.4. The suggested governance arrangements for the decision-making process relating to the Orkney Islands Local Marine Asset Management and Local Governance Pilot Scheme, as outlined in sections 6 and 7 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure.

13.5. The advantages and disadvantages of progressing with the Orkney Islands Local Marine Asset Management and Local Governance Pilot Scheme, as outlined in section 8 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure.

The Committee resolved to **recommend to the Council:**

13.6. That, subject to the key issues identified during the Stage 2 assessment process being clarified and “preferred project status” thereafter secured, the Council should proceed with the Orkney Local Marine Asset Management and Local Governance Pilot Scheme.

14. Asset Management Sub-committee

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 paragraphs 6, 8 and 9 of Part 1 of Schedule 7A of the Act.

After consideration of the draft Minute of the Meeting of the Asset Management Sub-committee held on 30 May 2019, copies of which had been circulated, the Committee:

Resolved, on the motion of Councillor W Leslie Manson, seconded by Councillor James W Stockan, to approve the Minute of the Meeting of the Asset Management Sub-committee held on 30 May 2019, attached as Appendix 6 to this Minute, as a true record.

15. St Magnus Cathedral Sub-committee

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 6 of Part 1 of Schedule 7A of the Act.

After consideration of the draft Minute of the Meeting of the St Magnus Cathedral Sub-committee held on 3 April 2019, copies of which had been circulated, the Committee:

Resolved:

15.1. On the motion of Councillor Robin W Crichton, seconded by Councillor John T Richards, to approve the Minute of the Meeting of the St Magnus Cathedral Sub-committee held on 3 April 2019 as a true record.

The Committee resolved to **recommend to the Council:**

15.2. That the recommendations at paragraphs 2.4, 3.5, 4.3 and 4.4 of the Minute of the Meeting of the St Magnus Cathedral Sub-committee held on 3 April 2019, attached as Appendix 7 to this Minute, be approved.

16. Scapa Flow Visitor Centre and Museum

The Committee noted that this item had been withdrawn.

17. Conclusion of Meeting

At 13:10 the Chair declared the meeting concluded.

Signed: James W Stockan.

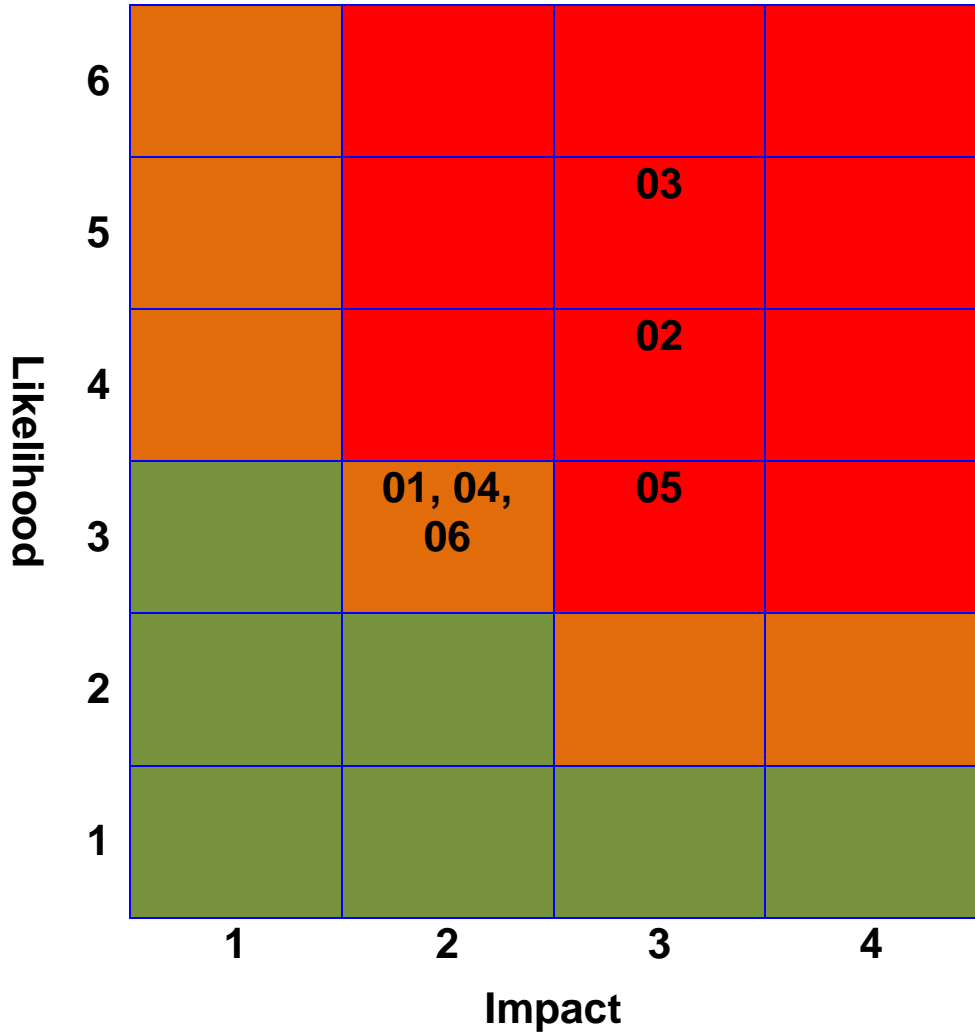
Chief Executive's Service Risk Register – 31 March 2019

Operational Risks

Cluster.	Risk number.	Owner.
Financial.	5.	Head of Finance.
Staffing.	3, 4.	Heads of Service and all Managers.
Economic Recovery and Sustainability.		
Political.		
Partnerships.		
Governance.	6.	Head of Executive Support.
Communication.	1, 2.	Heads of Service and all Managers.

Strategic Risks

Cluster.	Risk number.	Owner.
Financial.	5.	Head of Finance.
Staffing.		
Economic Recovery and Sustainability.		
Political.		
Partnerships.		
Governance.		
Communication.		



KEY

Impact:
 4 = Catastrophic
 3 = Critical
 2 = Significant
 1 = Negligible

Likelihood:
 6 = Very High
 5 = High
 4 = Significant
 3 = Low
 2 = Very Low
 1 = Almost Impossible

Risk Title: 01 – Internal Communication and Engagement.

Likelihood.	3.	Impact.	2.	RAG.	Amber.	Current Risk Score.	6.	Target Risk Score.	4.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
The Service could improve its internal communication with staff to facilitate improved working relationships and understanding between Services.	We fail to explain clearly to staff key Service and Council information and we fail to meet internal customer's expectations.	Disengagement and resistance to change; Uncertainty among some staff; Poor staff morale; Lack of ownership of the change agenda and the need for change; Unhappy customers; Disruption to achieving Service objectives.	01.1. Monitor quarterly at Chief Executive's Service Management Team meetings. 01.2. Development of staff newsletter. 01.3. Progress the actions arising from the Staff Survey in relation to communications. Managers to ensure distribution of correspondence, minutes of meetings.

Risk Title: 02 – Social Media Communication.

Likelihood.	4.	Impact.	3.	RAG.	Red.	Current Risk Score.	12.	Target Risk Score.	9.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
Instant, uncontrollable and unpredictable nature of the medium is highly resource intensive and 24/7.	Failure to manage how we respond to social media.	Reputational risk; Impact on staff directly; Impact on staff morale; Legal implications.	02.1. Ensure Communications staff have the knowledge to respond effectively via social media. 02.2. Communication strategy for budget setting process includes social media.

Risk Title: 03 – Continuity of staffing and knowledge.

Likelihood.	5.	Impact.	3.	RAG.	Red.	Current Risk Score.	15.	Target Risk Score.	9.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
Smaller teams are less resilient and more vulnerable. Recruitment and retention is ongoing challenge due to changing job markets.	Unplanned and planned staff absence; Unexpected and unplanned events.	Impact on staff morale and ability to take leave; Impact on team effectiveness; Poor communication; Impact on management capacity; Inefficient use of staff; Inability to implement planned work and deliver statutory functions.	03.1. Staffing arrangements are constantly under review. 03.2 Take a flexible approach to staffing to help cover workloads. 03.3 Develop a flexible post / job description to cover more than one area in the service.

Risk Title: 04 – Staff Training and development.

Likelihood.	3.	Impact.	3.	RAG.	Red.	Current Risk Score.	9.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
Staff may not be fully trained or experienced; Staff may not be aware of or may inadvertently breach Council policy or Code of Practice; Limited access to training budget. Staff may not feel valued if no investment in continuing professional development is made.	The Service and Council are unable to deliver functions effectively; Lack of corporate consistency.	Lack of resilience; Poor staff morale; Legal and financial implications; Reputational loss; Increased rate of error; Unable to meet professional ERD requirements.	04.1. Continue annual ERD's and review Service and team training plans. 04.2 Promote Council's Learning and Development programmes and resources.

Risk Title: 05 – Inability to deliver core services and expand demand-led services in line with expectation.

Likelihood.	5.	Impact.	3.	RAG.	Red.	Current Risk Score.	9.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
The risk of insufficient financial resources to meet current and future demand.	The Council's inability to deliver essential services within the funding package provided by Scottish Government; Expectations outstrip capacity to deliver.	Community unrest; dissatisfied service users and elected members; Unmet demand; Loss of credibility of the Council; Failure to deliver the range of services expected.	05.1. Revenue Budget monitoring process and procedures. 05.2. Communication with Scottish and Westminster Governments including through the Our Islands Our Future campaign. 05.3. Implement strategy for efficiency savings for 2017/18 and work with the Change Programme for longer term strategic planning.

Risk Title: 06 – Insufficient ongoing training and development programme for elected members and co-opted members.

Likelihood.	3.	Impact.	2.	RAG.	Amber.	Current Risk Score.	6.	Target Risk Score.	4.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
An inadequate ongoing training and development programme may lead to decisions which are made with inadequate information or training around governance processes.	Members do not receive relevant information for informed decision making within governance arrangements.	Decisions are made which may be unlawful or ultra vires resulting in reports from the Monitoring Officer. Complaints regarding the conduct of members in respect of governance may be made to the Standards Commission if members	06.1. Deliver ongoing training and development programme. 06.2. Undertake an annual follow up with individual Councillors to identify any areas for further development or training. 0.6.3. Encourage Councillors to sign up to professional development scheme.

Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
		<p>are unaware of governance procedures.</p> <p>Increase in Complaints to the Council, Increased number of appeals against planning or licensing decisions.</p>	

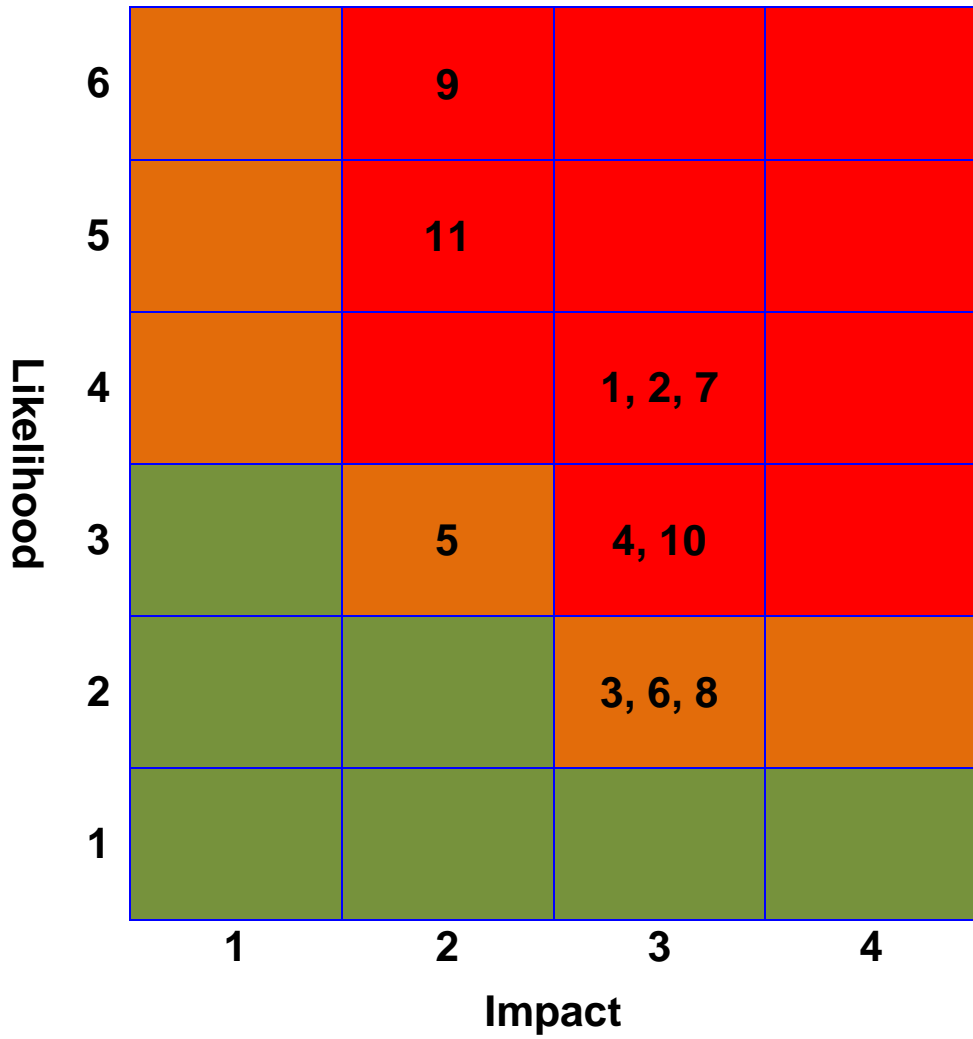
Corporate Services Risk Register – May 2019

Operational Risks

Cluster.	Risk number.	Owner.
Financial.		
Staffing.	4.	Head of HR and Performance.
Economic Recovery and Sustainability.		
Political.		
Partnerships.		
Governance.		
Communication.	7.	Head of IT and Facilities.

Strategic Risks

Cluster.	Risk number.	Owner.
Financial.	2, 3.	Head of IT and Facilities.
Staffing.	1.	Head of HR and Performance.
Economic Recovery and Sustainability.		
Political.		
Partnerships.	11.	Executive Director of Corporate Services.
Governance.	5, 6, 9, 10.	Head of Legal Services and Head of IT and Facilities.
Communication.	8.	Strategy Manager.



KEY

Impact:
 4 = Catastrophic
 3 = Critical
 2 = Significant
 1 = Negligible

Likelihood:
 6 = Very High
 5 = High
 4 = Significant
 3 = Low
 2 = Very Low
 1 = Almost Impossible

Risk Title: S01 – Workforce planning – lack of skills, experience and capacity

Likelihood.	4.	Impact.	3.	RAG.	Red.	Current Risk Score.	12.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
Insufficient workforce planning actions underway. Capacity issues make it difficult for the service to realise its priorities.	The service does not have the right staff, in the right place, at the right time, to deliver set priorities and / or statutory functions.	Corporate Services cannot manage within its resources; Existing workforce becomes overstretched and demoralised; Service standards drop and vulnerable people are placed at risk; Senior officers get tied up in operational work; The service is reactive rather than proactive; An increased risk in legal challenges and complaints; Risk of financial penalties.	1.1 Workforce plan was put in place for Corporate Services in 2017. 1.2 A new corporate Workforce plan was agreed in April 2019. 1.3 Workforce planning priorities for Corporate Services will be included in the refreshed Service Plan for 2019 to 2022.

201

Risk Title: S02 – Council IT and Property assets – to ensure we obtain maximum benefit from the Council’s assets

Likelihood.	4.	Impact.	3.	RAG.	Red.	Current Risk Score.	12.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
The Council may not have sufficient funds to sustain assets, replace ageing assets and develop key assets. Essential buildings and infrastructure for communications etc. have to be maintained to ensure property, IT, telecoms and other infrastructure continue to be able to support the	The Council cannot maintain or develop its essential assets to provide public services; The Council cannot implement an asset management strategy; The public is unable to communicate with services; Professionals are unable to communicate with each	Buildings deteriorate; IT infrastructure cannot support services; Unused/ surplus buildings; Services are not delivered; Vulnerable people are at risk; Communication is not possible between agencies to co-ordinate services; Council's reputation at risk.	2.1 All IT and property assets are proactively managed. 2.2 The work to make sure that we obtain maximum benefit from the Council's property assets in now integrated in overall Estates team programme of work. 2.3 IT assets are proactively monitored through an annual Capital Replacement Programme (£420,000 per annum).

Council's services. The risk continues and increases over time.	other to provide effective services.		2.4 The Corporate Asset Management Plan for 2019 to 2023 was updated in early 2019. 2.5 The Property Asset Management Plan is due to be updated in Autumn 2019. 2.6 The IT Asset Management Plan is due to be updated in Winter 2019.
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Risk Title: S03 – Procurement – Procurement compliance and sustainable communities

Likelihood.	2.	Impact.	3.	RAG.	Amber.	Current Risk Score.	6.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
<p>Financial and non-financial savings have not yet been fully explored.</p> <p>Further work to be done to support local businesses to help them participate in procurement opportunities, building on the Meet the Buyer events held in 2016, 2017 and 2018.</p>	<p>Legal challenge is a possibility unless the Procurement Regulations are complied with and processes followed; Officers fail to understand the limitations that the Procurement Regulations place on the Council; Officers do not follow due process and tendering has to be repeated; Anticipated savings may not be fully realised through collaborative contracts. The local economy may not be as well supported as it could be; Member/officer disharmony due to lack of understanding of responsibilities.</p>	<p>Financial loss due to legal challenge; Reputational harm; Delays in services being procured due to re-tendering or court action; Loss to the local economy; Loss of effectiveness and efficiency; Lost opportunity in terms of savings.</p>	<p>3.1 Continue to roll out induction courses as required.</p> <p>3.2 The Council's procurement policies to enhance local economic sustainability and community benefit have been reviewed, and an annual Meet the Buyer event initiated in 2016.</p> <p>3.3 Contract Standing Orders updated in March 2018, with a review due to start in Summer 2019.</p> <p>3.4 The Service was audited in the year 2017 to 2018 and received positive feedback. Any actions arising have been addressed.</p> <p>3.5 The Sustainable Procurement Policy was approved at the General Meeting of the Council in March 2018.</p> <p>3.6 The Procurement Manual was updated in May 2019, with work to cascade all changes to relevant staff due to start in June 2019.</p>

Risk Title: O04 – HR systems – inadequate development or use of existing electronic systems

Likelihood.	3.	Impact.	3.	RAG.	Red.	Current Risk Score.	9.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
Inefficient processes and lack of capacity to develop new processes.	Too much time spent on administrative processes.	Failure to provide a comprehensive HR service.	4.1 Phase 2 development of the HR / Payroll system project his ongoing and due for completion in 2020. 4.2 Continue to develop use of e-processes on Recruitment Portal as resources allow.

Risk Title: S05 – Data protection – lack of awareness of data protection rules and information security best practice throughout the organisation

Likelihood.	3.	Impact.	2.	RAG.	Amber.	Current Risk Score.	6.	Target Risk Score.	3.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
A lack of staff resources to give to this matter the attention it needed has been addressed and awareness of the issues is growing throughout the Authority, although further work is needed. The General Data Protection Regulation and Data Protection Act have replaced the Data Protection Act 1998 and have introduced new duties for the Council.	There is a risk of the Council breaching its obligations under the Data Protection Act 2018 or the General Data Protection Regulation.	National and local reputational damage; Maximum financial penalties will increase; Staff resource required to respond to any complaint against the Council relating to a breach of its obligations under the Data Protection Act 2018 or the General Data Protection Regulation (opportunity cost). Council not responding to Subject Access Requests efficiently and appropriately.	5.1 New Data Protection Policy 2018 in place to reflect new legislation. 5.2 New mandatory data protection course available on iLearn and completion by staff is monitored. 5.3 Staff are required to participate in mandatory training on information security. 5.4 Self-evaluation questionnaires are being completed by Services to ensure that any remedial measures can be identified and actioned. 5.5 Compliance with corporate policies and guidance is monitored on a regular basis.

Risk Title: S06 – Public Records Act – failure to comply with the Public Records (Scotland) Act 2011.

Likelihood.	2.	Impact.	3.	RAG.	Amber.	Current Risk Score.	6.	Target Risk Score.	4.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
The lack of staff resources to give this matter the attention it needs has been addressed. A new Records Management Plan has been submitted to the Keeper of the Records of Scotland for approval.	Failure to implement records management plan.	Local and reputational damage; Opportunity costs due to inefficient records management system; Failure to respond to information requests within statutory timescales; Increased risk of breaching data protection rules. Council spending more money on records storage than it needs to; inefficient use of Council assets.	6.1 A Records Management policy is in place and the Information Governance Group meets monthly. 6.2 A new Records Management Plan, to implement the Records Management Plan, has been approved by the Corporate Management Team and has been submitted to the Keeper of the Records of Scotland for approval. In the meantime, progress against the actions in the current Records Management Plan is reported on a regular basis to the Executive Director of Corporate Services. 6.3 Work is currently underway to develop and implement an Electronic Document and Records Management System which will support compliance by the Council with its statutory obligations. Delivery of the project is overseen by a Project Board and political governance is provided by Elected Members through the Policy and Resources Committee and the Change Forum.

Risk Title: O07 – ICT infrastructure and support insufficient to support the level of digital transformation required.

Likelihood.	4.	Impact.	3.	RAG.	Red.	Current Risk Score.	12.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
<p>The ICT infrastructure and support capacity is better understood.</p> <p>Future digital requirements are better understood</p> <p>Capacity within the ICT team is running below establishment levels, although recruitment is underway.</p>	<p>The ICT infrastructure is not sufficient to effectively run the required systems.</p> <p>The ICT staff cannot provide a suitable level of support for ongoing digital transformation or to deliver the ICT strategy for 2017 to 2020.</p>	<p>Existing systems could suffer reduced performance or fail.</p> <p>New systems not implemented.</p> <p>End users may be unable to properly utilise systems.</p> <p>Potential reputational damage with both staff and public.</p> <p>Failure to deliver efficiencies.</p> <p>OIC fails to make the necessary cultural changes to facilitate the switch to Digital delivery and Digital Transformation</p>	<p>7.1 Improved Management oversight in place and the service team structure has been reviewed to add in additional capacity.</p> <p>7.2 ICT Capital Replacement programme is delivering improvements to the infrastructure.</p> <p>The 3-year Disaster Recovery and Business Continuity Project began on 1 April 2018.</p> <p>7.3 A revised Digital Strategy was presented to the Asset Management Sub-committee on 31 May 2018, and progress on delivery of the Strategy is regularly reported to Senior Managers and Elected Members.</p> <p>7.4 Digital Maturity Assessment completed in November 2018, and a day's workshop on outcomes and next steps with the Digital Officer has been arranged for May 2019.</p>

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Risk Title: S08 – Public / Community engagement – lack of evidence of active engagement

Likelihood.	2.	Impact.	3.	RAG.	Amber.	Current Risk Score.	6.	Target Risk Score.	4.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
<p>Public sector bodies and Community Planning Partnerships are subject to increasing pressure to demonstrate active engagement with</p>	<p>The Council and / or CPP may be required to produce evidence of community input into decision-making and co-production of services. Decisions may be</p>	<p>Decisions made by the Council and/or CPP could lack the full benefit of community input</p> <p>Increased level of scrutiny from external auditors and inspectors.</p>	<p>8.1 The Consultation and Engagement Officers Group met on 6 July 2018, 31 Oct 2018 and 30 Jan 2019 to review progress in all actions associated with this risk.</p> <p>8.2 The Council adopted a new Community Consultation and Engagement Policy in Feb</p>

<p>communities, most recently from the guidance regarding participation requests.</p>	<p>challenged on grounds of lack of evidence of engagement.</p>	<p>Loss of public support for Council and/or CPP decisions. Loss of public credibility.</p>	<p>2019, to complement the Orkney Partnership's guidelines already adopted by the Council. 8.3 The Consultation and Engagement Officers Group delivered staff refresher training courses on 13 June 2018 and 22 Feb 2019. 8.4 Progress in Orkney Opinions was reported to Committee on 19 June 2018 and the pilot was extended for a further year, with 8 surveys issued to end of March 2019. A further report is to be considered by Policy and Resources Committee in June 2019. 8.5 The Participation Requests Policy is in operation and two Participation Requests have been received to date, with one granted and one refused. Decision notices were posted online in accordance with the statutory timetable, and an associated outcomes improvement process is nearing completion.</p>
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Risk Title: S09 – Failure to comply with Scottish Government expectation that all publicly owned land be registered by 7 December 2019. The deadline is not currently legally binding although it is a Scottish Government expectation

Likelihood.	6.	Impact.	2.	RAG.	Red.	Current Risk Score.	12.	Target Risk Score.	10.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
<p>Insufficient resources both from point of view of staffing and funding, including land registration dues, plan preparation, search dues and investigation.</p>	<p>There is a high risk of the Council not meeting the Scottish Government's expectation.</p>	<p>Main consequences are currently anticipated as being political and reputational, both locally and nationally. It is possible that there may be financial penalties, although there is no reference to this in the legislation as it currently stands.</p>	<p>9.1 Registration is currently being undertaken within existing resources. Discussions are taking place between COSLA Officers and Scottish Government to discuss how registration of all local authority land can be taken forward in the context of the financial constraints affecting local authorities in Scotland.</p>

Risk Title: S10 – Cyber security – with an increase in the use of publicly visible technology, there is an increased risk of exposure to threats from criminal and other malicious parties

Likelihood.	3.	Impact.	3.	RAG.	Red.	Current Risk Score.	9.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
Failure to implement and maintain suitable controls to protect assets.	Disclosure or loss of data.	Financial and legal implications. Reputational risk, direct implications for staff, inability to access information when required.	<p>10.1 Adopt recognised standards to counteract cyber threats including the UK Government Cyber Essentials scheme.</p> <p>10.2 Implement suitable security controls to support efficient functioning of OIC ICT infrastructure.</p> <p>10.3 Develop co-operative connectivity with public sector and third sector bodies.</p> <p>10.4 Develop a culture of security by raising awareness of personnel to vulnerabilities, risks and threats from cyberspace and the need to protect information systems.</p> <p>10.5 Actively participate in the national initiatives for sharing intelligence.</p> <p>10.6 PSN reaccreditation was achieved in August 2018.</p> <p>10.7 Cyber Essentials + accreditation was achieved in April 2019.</p> <p>10.8 Succession planning with ICT underway, with external training and qualifications being explored.</p>

Risk Title: S11 – Single Authority Model (SAM)

Likelihood.	5.	Impact.	2.	RAG.	Red.	Current Risk Score.	10.	Target Risk Score.	6.
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Vulnerability.	Trigger.	Consequences.	Mitigating Actions.
SAM is dependent on multiple agencies being able and willing to commit to permanent changes in governance. This could be hindered by a wide range of internal or external factors. It could potentially be stalled by a change in policy or personnel on the part of any of the key players.	<p>Scottish Government Ministers fail to commit collectively to SAM and/or to convey unambiguous directives to participating SG departments, local agencies and other bodies.</p> <p>Lack of buy-in from staff of participating bodies.</p> <p>Change in policy by the Council or any participating Board.</p>	<p>Local partner agencies withdraw commitment to SAM.</p> <p>Failure to deliver optimally joined-up services.</p> <p>Failure to maximise resources for delivery of front-line services.</p>	<p>11.1 Maintain and support an active and engaged SAM Steering Group.</p> <p>11.2 Initiate and maintain pro-active engagement with Scottish Ministers.</p> <p>11.3 Initiate early engagement with staff groups and Unions.</p> <p>11.4 Demonstrate potential benefits of SAM for the Orkney community and Scottish Government.</p>



Participation Requests and Community Asset Transfer Requests: Annual Report 2018 to 2019

Introduction

1.

In 2017, the Council adopted two new policies to meet the requirements of sections 3 and 5 of the Community Empowerment (Scotland) Act 2015, relating to the participation of community bodies in the improvement of Council services and the transfer of assets to community bodies, the latter commonly referred to as community asset transfer requests or CATs.

2.

Every year, the Council is required to report on activity which has taken place locally with regard to participation requests and CATs. This report covers activity during the year from 1 April 2018 to 31 March 2019.

Participation Requests

3.

Participation requests are an opportunity for communities to establish formal dialogue with public service authorities. They are not intended to replace good quality existing community engagement or participation processes, nor are they intended to be an extension of complaints procedures.

4.

Section 22 of the Act states "A community participation body may make a request to a public service authority to permit the body to participate in an outcome improvement process".

5.

A community participation body for this purpose may be a community council, a community group with a defined constitution and membership or indeed any other group which is open to any members of a specified community and which is controlled by and operates for the benefit of the members of that community.

6.

A public service authority, in Orkney, could be Orkney College, NHS Orkney, Highlands and Islands Enterprise, Orkney Islands Council, Police Scotland, Scottish Environment Protection Agency, Scottish Fire and Rescue Service, Scottish Natural Heritage or HITRANS.

7.

An outcome improvement process is any process which is initiated or managed by the public service authority to improve a public service. For example, when a service is being reviewed, a community body may ask to take part in the process. They may want to bring about particular changes, or perhaps bid to run the service themselves.

8.

By engaging in an outcome improvement process it is anticipated that community bodies will gain a better understanding of the complexity of some problems and the constraints on councils in seeking to address them. As equal partners in an outcome improvement process, community bodies may be willing to bring more to the table themselves and contribute to co-productive solutions. Ideally, those on both sides of the legislation will take the opportunity to build trust and develop new working relationships.

9.

In June 2017, the Council adopted a new policy and associated guidance for participation requests. A press release was issued, and the policy and guidance were published on the council website at <http://www.orkney.gov.uk/Council/C/participation-requests.htm>.

10.

In order to raise awareness among community bodies of both participation requests and community asset transfer, Voluntary Action Orkney arranged a seminar for third sector agencies on 24 May 2018, which was delivered by the Scottish Community Development Council jointly with Council officers.

11.

A corresponding seminar was arranged for Council officers for 25 May 2018, also with the Scottish Community Development Council, which looked at examples of participation requests and CAT requests which have been made to other authorities and how they have progressed.

12.

Further staff training in participation requests was delivered on 13 June 2018 and 22 February 2019 as part of a series of updates on recent developments in consultation and engagement delivered periodically by members of the Consultation and Engagement Officers Group.

13.

Section 32 of the Community Empowerment (Scotland) Act 2015 requires every public service authority to publish an annual report setting out information about the number and outcomes of participation requests that have been dealt with. For Orkney Islands Council the report covers the period from 1 April 2018 until 31 March 2019.

14.

The Council received two participation requests during 2018 to 2019, as summarised below. [Decision notices](#) were published on the Council's website on the dates indicated.

Community body.	Westray Community Council.
Date received.	28 August 2018.
Validation date.	29 August 2018.
Summary of request.	This Participation Request related to the health and safety of pedestrians, and improved safety for vehicle manoeuvring, at Rapness Pier. Westray Community Council requested participation in an Outcome Improvement Process to resolve these matters.
Decision Notice.	26 September 2018 – Granted. The Participation Request was granted on the grounds of public health and social wellbeing.
Outcome improvement process.	Following discussion with Westray Community Council, the Outcome Improvement Process was progressed jointly by representatives of the Community Council, Orkney Ferries and Marine Services, Engineering and Transportation. An initial workshop was held in Westray on 10 January 2019. Temporary measures had been put in place on the pier and were judged to have been reasonably successful. Following consideration of various options it was agreed to implement a solution which would operate in a very similar fashion to the temporary measure but with a permanent pedestrian gate and the addition of gated access for vehicles to the pier. This was considered to provide a reasonable solution to all foreseen combinations of movements of vehicles and pedestrians.

Community body.	North Ronaldsay Community Council.
Date received.	13 October 2018.
Validation date.	15 October 2018.
Summary of request.	This Participation Request related to the establishment of a sheltered reliable berth to enable a higher frequency and reliability of ferry services to the island. The Community Council sought “participation in the proceedings of the Outline Business Case following the Scottish Transport Appraisal Guidance 2 options appraisal to ensure that at the third time of asking in thirty years it can establish the justification for the major investment in its infrastructure afforded almost universally elsewhere”.
Decision Notice.	6 November 2018 – Refused. The Participation Request was refused on the grounds that the guidance provided by the Scottish Government states that “participation requests are not intended to replace good quality existing community engagement or participation processes but are rather designed to complement and enhance them”. The Council considered North Ronaldsay Community Council's involvement in the processes of the Scottish Transport Appraisal Guidance, Strategic Business Case and ongoing Outline Business Case as being ample opportunity for the Community Council to be involved in the shaping and decision making around the Inter Island transportation services. However, the Council welcomed and looked forward to North Ronaldsay Community Council's ongoing contribution to the Outline Business Case development process.

Community Asset Transfer Requests

15.

The Community Empowerment Act (Scotland) 2015 is a powerful tool for communities to have control of publicly owned land and buildings to provide an opportunity to strengthen and develop communities. Access to land or buildings can provide jobs, training and bring income to local areas and help grow a sustainable community. Inward investment can also be obtained with projects attracting financial support from sources which couldn't normally assist when land or buildings remain in public ownership.

16.

The Act moves forward from a voluntary approach by the public sector and introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide range of other public bodies.

17.

Orkney Islands Council has a long track record of working with local communities and community bodies to strengthen and develop local communities. The Council has provided many properties to local community bodies at below market rental value and has often provided additional support to communities beyond the provisions set out in leases.

18.

Asset Transfer Guidance for community bodies and relevant authorities has been published by the Scottish Government. Information about the Act and the Council's policies and associated guidance can be found at: <http://www.orkney.gov.uk/Service-Directory/P/asset-transfer-requests-community-empowerment.htm>.

19.

The Council has promoted opportunities around community bodies making asset transfer requests in a variety of ways since the introduction of the legislation in January 2017, including press releases and articles on the Council's website.

20.

In June 2017 the Council joined with colleagues in Highlands and Islands Enterprise to participate in a local community information sharing event which was well attended by a range of representatives from community bodies. The event was an opportunity to raise awareness and provide insight to the challenges and opportunities community bodies face. Speakers from a range of different organisations, some local, some national, gave advice and insight to the processes, the do's and don'ts and the potential benefits that community led projects could deliver through asset transfer.

21.

The event included a Q and A session at the end of the one-day event where participants could focus directly on topics raised by the audience participants. This also enabled networking opportunities which allowed audience members to connect with useful sources of information and advice that may be relevant to their own particular projects.

22.

A similar event was held during May 2018 and saw the Council working closely with one of our community planning partners, Voluntary Action Orkney, to provide more information around asset transfer opportunities and participation requests.

23.

The Council has also been looking at its land and property estate with a view to identifying potential opportunities to engage with relevant local community representatives and community bodies around the subject of asset transfer. It is hoped that taking a positive approach to releasing land and property will encourage communities to take a pro-active role in potential projects which might be of benefit to their local communities. In the challenging financial times faced by all public bodies it is important that the Council finds ways to support and grow sustainable communities who can be well placed to meet the needs of local people.

24.

Section 95 of the Community Empowerment (Scotland) Act 2015 requires every relevant authority to publish an annual report setting out information about the number and outcomes of asset transfer requests that have been dealt with. For Orkney Islands Council the report covers the period from 1 April 2018 until 31 March 2019.

25.

The table below sets out the information required to be included.

Item.	Response.
How many asset transfer requests were received.	None.
How many requests were agreed to or refused.	Agreed: none. Refused: none.
For requests agreed to, whether they resulted in transfer of ownership, lease or conferral of other rights.	Not applicable.
For appeals relating to requests made, how many have been allowed, dismissed, or have resulted in any part of the authority's decision being reversed or changed.	Not applicable.
For decisions reviewed by the authority, how many have been confirmed, modified or substituted by a different decision.	Not applicable.

26.

The Council has handled several enquiries around asset transfer, however none have progressed to a formal submission in terms of the legislation. The Council continues to work closely with community groups with a view to releasing assets that the community can use to develop sustainable services within their local area.

27.

Contact officer for Participation Requests: Anna Whelan, Strategy Manager, Corporate Services.

Telephone: 01856873535 extension 2160.

Email: anna.whelan@orkney.gov.uk.

Contact officer for Community Asset Transfer Requests: Graeme Christie, Estates Manager, Corporate Services.

Telephone: 01856873535 extension 2303.

Email: graeme.christie@orkney.gov.uk.

Published by Orkney Islands Council on XX July 2019.

Minute

Police and Fire Sub-committee

Tuesday, 28 May 2019, 14:00.

Council Chamber, Council Offices, School Place, Kirkwall.



Present

Councillors Alexander G Cowie, David Dawson, Andrew Drever, J Harvey Johnston, Magnus O Thomson and Kevin F Woodbridge.

Clerk

- Sandra Craigie, Committees Officer.

In Attendance

- Gillian Morrison, Executive Director of Corporate Services.
- Anna Whelan, Strategy Manager.

Police Scotland:

- Chief Inspector Matthew Webb, Area Commander.
- Detective Sergeant David Hall.

Scottish Fire and Rescue Service:

- John McKenna, Group Manager.

Observing

- Wilfred Weir, Executive Director of Education, Leisure and Housing.

Apology

- Councillor Gwenda M Shearer.

Declaration of Interest

- Councillor Andrew Drever – Item 4.

Chair

- Sandra Craigie, Committees Officer (for Item 1).
- Councillor Andrew Drever (for Items 2 to 5).

1. Appointment of Chair

The Committees Officer called for nominations for Chair of the Police and Fire Sub-committee, and the Sub-committee:

Resolved that Councillor Andrew Drever be appointed Chair of the Police and Fire Sub-committee.

Councillor Andrew Drever then took the Chair for the remainder of the meeting.

2. Appointment of Vice Chair

The Chair called for nominations for Vice Chair of the Police and Fire Sub-committee, and the Sub-committee:

Resolved that Councillor David Dawson be appointed Vice Chair of the Police and Fire Sub-committee.

3. Scottish Fire and Rescue Service

Performance Against Orkney Fire and Rescue Plan

After consideration of a report by Iain Macleod, Local Senior Officer, copies of which had been circulated, and after hearing a report from John McKenna, Group Manager, the Sub-committee:

Scrutinised the statistical performance of the Scottish Fire and Rescue Service, Orkney Islands area, for the period 1 January to 31 March 2019, detailed in the Quarterly Performance Report, attached as Appendix 1 to the report by the Local Senior Officer for Orkney, Shetland and the Western Isles, and obtained assurance.

4. Performance Against Local Policing Plan

Councillor Andrew Drever declared a non-financial interest in this item, in that he was Chair of Orkney Drugs Dog, but as the matter was not discussed in detail, he did not leave the meeting.

After consideration of a report by Chief Inspector Matthew Webb, Area Commander, copies of which had been circulated, the Sub-committee:

Scrutinised progress made against the objectives set within the Orkney Islands Local Policing Plan 2017 to 2020 Year 2, attached as Appendix 1 to the report by the Area Commander, for the period covering 1 April 2018 to 31 March 2019, and obtained assurance.

5. Conclusion of Meeting

At 15:03 the Chair declared the meeting concluded.

Signed: A Drever.

Minute

Human Resources Sub-committee

Thursday, 30 May 2019, 11:30.

Council Chamber, Council Offices, School Place, Kirkwall.



Present

Councillors W Leslie Manson, Robin W Crichton, Steven B Heddle, John T Richards, Gwenda M Shearer, Graham L Sinclair, James W Stockan and Duncan A Tullock.

Clerk

- Hazel Flett, Senior Committees Officer.

In Attendance

- Gillian Morrison, Executive Director of Corporate Services.
- Andrew Groundwater, Head of HR and Performance.
- Colin Kemp, Corporate Finance Senior Manager.
- Peter Trodden, Solicitor.
- Craig Walker, Senior HR Adviser.

Declarations of Interest

- No declarations of interest were intimated.

Chair

- Councillor W Leslie Manson.

1. Capability Policy and Procedure

After consideration of a report by the Executive Director of Corporate Services, together with an Equality Impact Assessment, copies of which had been circulated, and after hearing a report from the Head of HR and Performance, the Sub-committee:

Noted:

1.1. That the Capability Policy was last reviewed and approved by Council in March 2014.

1.2. The revised Capability Policy and Procedure, attached as Appendix 1 to the report by the Executive Director of Corporate Services, which had been amended to reflect feedback from the Senior Management Teams within Orkney Health and Care and the Education, Leisure and Housing service, as well as recognised Trade Unions.

The Sub-committee resolved to **recommend to the Council:**

1.3. That the revised Capability Policy and Procedure, attached as Appendix 1 to this Minute, be approved.

2. Conclusion of Meeting

At 11:45 the Chair declared the meeting concluded.

Signed: L Manson.



Capability Policy and Procedure

July 2019

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This document is also available in large print and other formats and languages, upon request. Please contact Human Resources

1. Policy Statement

Orkney Islands Council recognises the need to ensure that at all time it has a workforce that is highly competent and capable of providing efficient and effective services to the communities of Orkney.

The Council recognises that situations do occur where employees may fail to perform their duties and responsibilities to the minimum accepted standards and will ensure that managers adopt a fair, consistent and supportive approach which takes account of the circumstances for each employee in dealing with such capability issues.

The objectives of this policy and procedure are to:

- improve and maintain the standard of work performance of an individual employee, through advice, coaching, guidance and support, with the emphasis on developing a series of performance improvement plans, which are mutually agreed (wherever practicable) to reach the required standards;
- ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues;
- ensure that the Council is a fair employer, meeting all relevant legal requirements regarding any capability related decisions it may take in relation to any employee;
- support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees;
- contribute towards the improvement of the performance and effectiveness of the Council;
- help protect the Council, its employees and service users from the consequences of poor work performance

2. Scope of Policy

The scope of this policy applies to all employees of Orkney Islands Council on Scottish Joint Council (SJC), Orkney College Academic, and Chief Officials Conditions of Service on permanent and temporary contracts.

Teaching staff are subject to the GTC Scotland Framework on Teacher Competence (Appendix 1) in respect of the aspects of this policy referred to as performance related capability issues (Section 4). All other aspects related to capability issues of Teachers are managed in accordance with this policy and procedure.

The Capability Policy and Procedure will be reviewed by the Head of Human Resources and Performance or their nominated representative in conjunction with recognised trade unions in line with the schedule for the review of all Council Human Resources Policies and Procedures, normally every 3 years. Should changes to employment law, best practice recommendations or schemes of Conditions of Service dictate, a review within this timescale can be carried out by agreement with the Head of Human Resources and Performance.

3. General Principles

All employees should have a clear understanding of the job which they are employed to do, and the standards expected of them. The Council expects each employee thereafter to perform the requirements of the job to appropriate/specified relevant standards. It is recognised, however, that occasions will occur when the performance of an employee falls below an acceptable level.

Poor performance may occur at any time during employment, some examples of such situations are:

- a recently recruited employee does not perform to the required level;
- an existing employee is required to undertake additional duties within their existing post which they are unable to carry out;
- the employee is promoted to a post which is beyond their level of competence;
- an existing employee not performing to the required level, even though they may have been previously;
- the employee takes on caring responsibilities which affect performance.

Where this poor performance is not health related, or due to caring responsibilities, it may be categorised into six areas:

- the employee does not possess/no longer possesses the necessary skill(s) to undertake the post successfully;
- the employee does not have the ability needed to undertake the job successfully;
- the employee is unwilling to undertake duties, even though they possess the necessary skills/ability;
- the employee is negligent in undertaking his/her duties;
- the employee does not hold the necessary qualification or professional registration to be able to undertake the job;
- the employee is legally unable to undertake the job due i.e. being barred from undertaking protected work with children and/or adults.

Where an employee is failing to meet the standards of his/her post for one of the first two reasons above, the emphasis should be on providing assistance, training, coaching, setting realistic goals and monitoring progress, rather than issuing sanctions. However sustained poor performance may ultimately result in the termination of employment.

Where the employee is unwilling to undertake duties, or appears negligent in undertaking his/her duties, this should be dealt with under the Council's Disciplinary Policy and Procedure.

For some professions, (e.g. Teachers and Social Service Workers), it is necessary for the relevant professional body to be informed of any action which has been taken in respect of a member's capability.

It is the responsibility of the manager/head teacher to keep the Head of Service/Executive Director informed of on-going capability issues to enable them to ensure that any relevant information is passed to the appropriate professional body.

The employee must be offered the right of representation at all formal meetings by either a work colleague or a Trade Union representative/individual employed by a Trade Union.

There is no right to be represented or accompanied by a Solicitor or any other legal representative at any stage under this policy and procedure.

Advice should be sought from the Human Resources during the process.

3.1. Capability due to Sickness Absence or Caring Responsibilities.

It is recognised that, on occasion, employees may be unable to perform their duties due to either long term or persistent short-term absence. Such cases will normally be managed in accordance with the Council's Managing Sickness Absence Policy and Procedure.

Where caring responsibilities cause difficulties in attendance, such cases should be managed in accordance with the Council's Flexible Working Policy, and the employee should be signposted to Orkney Health and Care should they wish a Carer Assessment.

3.2. Recruitment and Selection

As part of the interview process, the Council has the opportunity to test an applicant's suitability for a particular post, and to ensure that the successful candidate has the necessary skills and ability to perform the duties of the post to an acceptable standard.

In addition to testing their ability, successful applicants at interview will be asked to complete an Occupational Health Questionnaire, in order for an assessment to be made as to whether they are fit to undertake the duties of the post. Qualifications should also be checked at this stage.

All appointments to posts will be made on the basis that the individual holds the minimum requirements to undertake the job. However, on occasion, acceptable shortfalls in skills or abilities may be identified at the time of the appointment, i.e., the employee meets the essential criteria for the post, but requires some assistance in attaining the desirable criteria.

If this is identified at either the time of the interview or during the period of employment, all appropriate and necessary steps should be taken to ensure that the individual receives appropriate training/experience in order to assist them in meeting the desirable criteria for the post.

3.3. Learning and Development

It is expected that each employee will possess the skills and ability to perform the duties of the post for which they are employed. The Council recognises however, that continuous development is essential in ensuring maximum efficiency and effectiveness. Where appropriate and relevant to the post, employees should be given the on-going opportunity to develop their ability, skills, knowledge and qualifications necessary to perform the duties and responsibilities of their current post effectively. Such training may be formal or informal and may include on-the-job training. In any respect, there should be overall standards and objectives identified and communicated.

3.4. Measuring Performance

In considering an employee's competence, it is important to objectively compare the requirements of the post against the abilities of the employee. The following information will be useful in measuring work performance:

- job description (including relevant occupational standards);
- person specification - outlines the minimum standards of the post;
- personal history of employee;
- comparison with relevant competencies – these may be competencies which have been developed locally within the Council, or may be nationally developed and agreed competencies appropriate to the post or profession;
- the individual employee's current/previous ERD and agreed objectives; and
- any relevant team or individual work plan.

Consideration should also be given to:

- check past performance - has the employee's performance only recently changed?

- measure the performance against the post rather than other people - one employee should not be compared against another employee;
- be aware of any personal prejudices;
- ensuring that reasonable adjustments are considered and made wherever possible where it is identified that performance is impacted on as a result of a disability;
- ensure the standards expected are reasonable and the minimum required to undertake the job - unreasonable standards may make any subsequent dismissal unfair.

3.5. Manager's Responsibilities

Every manager has responsibility for ensuring:

- that the standards expected of the employee are reasonable;
- that the employee is made aware of and understands the standards expected of them;
- the employee is made aware of the poor performance at the earliest opportunity available;
- the employee is given adequate opportunity, training, assistance and resources to improve his/her performance;
- reasonable adjustments are considered and made wherever possible if performance is impacted on due to a disability;
- wherever feasible, flexible arrangements are considered where the employee has a caring responsibility.
- targets and review periods agreed are within reasonable timescales.

3.6. Employee's Responsibilities

Every employee has responsibility for ensuring:

- that they maintain their standard of performance in work at an acceptable level;
- that they keep up to date with the skills and knowledge required to undertake the duties of their post;
- that they meet any updating requirements of their professional body, maintaining records as appropriate;
- that they seek advice from their manager regarding any concerns held about their own capacity to undertake the duties of their post;
- that they inform their manager of any factors which may prevent them from carrying out the duties of their post effectively;
- they are committed to and actively engage with any processes to support improvement in performance.

4. Performance Related Capability

4.1. General Principles

In general, the procedure to be followed will take account of the following principles:

- a careful appraisal of the employee's performance will be carried out by their manager;
- any concerns will be discussed with the employee;
- actions necessary to improve performance should be identified;
- the employee will then be advised of the consequences of there being no improvement and provided with a reasonable opportunity to improve.

In order to uphold these principles, it will normally be necessary to follow all of the stages outlined below, but depending on the capability issues raised, it may, on occasion, be acceptable to proceed more quickly and not to undertake each step. Where it is considered that such action may be appropriate, Human Resources should be consulted as to how best to proceed.

Given the wide variety of situations which may be dealt with in accordance with this procedure, it is not possible to attach time-scales to the individual stages. Instead, reasonable time should be given at each stage in order to ensure fairness to the employee while balancing this with the effect on service delivery.

If at any stage the employee's performance reaches the accepted standard, no further action will be taken under these procedures.

A positive approach should be taken while dealing with capability issues. This should alleviate the possibility of any unnecessary stress being caused by the situation. The employee should also be given adequate opportunity to improve performance.

It is not normally appropriate during the early stages of the process to discuss the possible final implications of poor performance with the employee as this could have an adverse effect on his/her performance. They should however, be provided with a copy of this procedure in order that they understand the process which can be followed and made aware that they can seek clarification on the process from their Trade Union representative or from Human Resources at any time.

If at any time during the formal procedure it becomes apparent that referral to a capability hearing and subsequent termination of employment may be a potential outcome, it is important that the employee is informed this is a possible consequence. This information should not, under any circumstances be used as a threat to an

employee and should only be discussed with them if it is a genuine, potential outcome to the capability process.

In any working situation standards of work may vary from time to time, it is important to distinguish what could be minor dips in performance from the situation where ongoing performance in the role is not at the required standard.

Managers should ensure that they are aware of where minor dips in performance do occur and where necessary they should discuss these with the employee through supervision, 1 to 1's or their general everyday communication.

Such an approach does not normally constitute the start of a capability process, however these discussions may provide useful incite to be able to support the employee and provide relevant evidence for a more formal process of managing performance, if this is necessary.

4.2. Stage 1 - Initial Discussion

The aim of this stage of the procedure is to make the employee aware of issues which have arisen in respect of their performance and to identify any reasons why their performance is not at an acceptable level; discuss ways in which improvements can be made and explore any support/assistance required to facilitate this process.

No formal action will be taken at this stage, and in order to keep the process as informal as possible, it will not normally be necessary for the employee to be accompanied at this meeting. If, however, the employee feels that they would like to be accompanied, a work colleague or Trade Union representative/individual employed by a Trade Union may accompany them. Although not normal, Human Resources may attend initial discussion meetings.

Where the performance of the employee raises concerns and falls below the level required for the post, there should be an informal meeting with them and their immediate manager. It is important that the situation is discussed at an early stage and not ignored for any length of time; otherwise, there may be an impact on service delivery. A one to one meeting should be held to:

- raise concerns regarding poor job performance and, in particular, discuss any shortfalls in skills and/or abilities. Where possible, examples of poor; workmanship, mistakes etc. should be produced. In all instances, details of the standards expected and the shortfall in performance on which concerns are based must be explained to the employee. Unless the employee is made aware of their poor performance, he/she cannot be expected to improve;

- discuss any underlying causes for the poor job performance. Consideration should be given to all circumstances surrounding performance i.e. any personal problems which may affect performance; change in management or supervision of the person concerned; problems with the management or supervision of the person; health issues; safety issues; working procedures;
- offer/agree any suitable training, coaching to assist the employee in improving his/her skills and abilities;
- agree reasonable measurable targets within the scope of the job description and personal specification for the post with the employee;
- ensure adequate supervision is provided;
- agree timescales for progress review meetings.

A note of the meeting should be agreed and signed, and a copy kept by both parties. If the employee indicates their disagreement with the comments made regarding their performance, the notes should reflect this. They should be made aware that the process will continue unless their manager is satisfied, having considered the content of the discussion, that an alternative approach is appropriate. A full discussion containing specific examples of shortfalls in performance should assist in reaching agreement.

At the end of the informal discussion meeting, a suitable period should be agreed in which to review the performance. The time scales agreed should allow adequate time for improvement, taking into account the nature of the concerns raised and the support mechanisms which have been agreed.

The employee should be made aware that failure to demonstrate an improvement in their performance within this period is likely to result in the situation being dealt with on a formal basis.

A review meeting should be held at the end of the agreed review period. If the employee's performance has improved to satisfactory levels, this should be confirmed to them. If there is little or no improvement, the employee should be informed that it is necessary to move to the formal process and of their right to be represented at this stage.

4.3. Stage 2 - Formal Meeting

Where the initial meeting has proven unsuccessful in improving performance and where the performance of the employee continues to cause concern and falls below the level required for the post, a formal meeting should be arranged with them.

The relevant manager should write out to the employee, advising him/her of the meeting, giving 7 days' notice and reminding them that they can be represented by

either a work colleague or Trade Union official/individual employed by a Trade Union and have outlined the reasons for holding the meeting. Template letters are available from Human Resources. Human Resources will normally attend review meetings at Stage 2.

The meeting will allow the manager to:

- confirm previous informal discussions relating to poor performance and how/why requirements for improvements discussed at this stage have not been met;
- raise concerns regarding poor job performance and, in particular, discuss any shortfalls in skills and/or abilities. Where possible, examples of poor workmanship, mistakes etc. should be produced.
- always have clearly defined standards expected and specific examples of the poor performance on which claims are based. Unless the employee is made aware of their poor performance, he/she cannot be expected to improve;
- discuss any underlying causes for the poor job performance. Consideration should be given to all circumstances surrounding the lack of performance i.e. any personal problems which may affect performance; change in management or supervision of the person concerned; problems with the management or supervision of the person; health issues; safety issues; working procedures;
- agree reasonable measurable targets within the scope of the job description for the post with the employee;
- offer/agree any suitable training, coaching to assist the employee in improving his/her skills and abilities;
- ensure adequate supervision is provided;
- advise the employee that continued poor performance may result in a capability hearing being convened.

At the end of the Stage 2 review meeting, a follow up review meeting should be arranged within a reasonable timescale, (e.g. this may be 4 working weeks but will depend on the circumstances), to discuss progress made on any agreed targets and performance.

A performance improvement plan (PIP) should be agreed between the manager and the employee. The PIP should outline the expected standards of performance, the improvements required, the timescale and any training/coaching/other assistance agreed to support the employee. This provides the employee with unambiguous information as to what is required of them, as well as being a valuable record of discussions. (See Appendix 2 for PIP template).

A review meeting should be held at the end of the agreed review period. If the employee's performance has improved to satisfactory levels, this should be confirmed

to them. If there is little or no improvement, the employee should be informed that it is necessary to move to Stage 3 of the formal process.

Where there has been some improvement, but the standard of performance is still not at the minimum required standard for the job at this stage, the manager should explore the reasons why sufficient improvement has not been made and agree:

- further measurable targets within the scope of the job description for the post;
- further suitable training/coaching to assist the employee in improving their skills and abilities to the required level.

In such circumstances, a suitable date should be agreed for a further review meeting to review performance. Following this, the situation should continue to be monitored in order to consider whether further review meetings or a capability hearing/redeployment should be considered.

The employee should have the targets set and future arrangements confirmed in writing, through the production of a new or revised Performance Improvement Plan.

There may be occasions where, despite the fact that there is some improvement, the circumstances are such that the manager/head teacher considers further opportunity to improve will not lead to the attainment of acceptable standards. In such circumstances, the manager may make the decision to proceed to Stage 3.

4.4. Stage 3 – Formal Review Meeting

Where the initial meeting has proven unsuccessful in improving performance and where the performance of the employee continues to cause concern and falls below the level required for the post, a formal meeting should be arranged with them.

The relevant manager should write out to the employee, reminding them of the review-meeting arrangements agreed at Stage 2. At least 7 days' notice should be provided and the employee reminded that they can be represented and have outlined the reasons for holding the meeting.

Template letters are available from Human Resources. Human Resources will normally attend review meetings at Stage 3.

The meeting will allow the manager to:

- confirm previous informal discussions relating to poor performance and how/why requirements for improvements discussed at this stage have not been met;

- raise concerns regarding poor job performance and, in particular, discuss any shortfalls in skills and/or abilities. Where possible, examples of poor workmanship, mistakes etc. should be produced.

You should always have clearly defined standards expected and specific examples of the poor performance on which claims are based. Unless the employee is made aware of their poor performance, he/she cannot be expected to improve;

- discuss any underlying causes for the poor job performance. Consideration should be given to all circumstances surrounding the lack of performance i.e. any personal problems which may affect performance; change in management or supervision of the person concerned; problems with the management or supervision of the person; health issues; safety issues; working procedures;
- agree reasonable measurable targets within the scope of the job description for the post with the employee;
- offer/agree any suitable training, coaching to assist the employee in improving his/her skills and abilities;
- ensure adequate supervision is provided;
- advise the employee that continued poor performance may result in a capability hearing being convened.

A performance improvement plan (PIP) should be agreed between the manager and the employee. The PIP should outline the expected standards of performance, the improvements required, the timescale and any training/coaching/other assistance agreed to support the employee. This provides the employee with unambiguous information as to what is required of them, as well as being a valuable record of discussions. (See Appendix 2 for PIP template).

At the end of the Stage 3 formal review meeting, a follow up review meeting should be arranged within a reasonable timescale, (e.g. this may be 4 working weeks but will depend on the circumstances), to discuss progress made on any agreed targets and performance.

A review meeting should be held at the end of the agreed review period to consider the level of performance at that time and the way forward.

4.4.1. Improvement in Performance

Where performance has improved to acceptable levels, no further action is considered necessary. The manager should write to confirm satisfaction with the employee's performance and confirm the need to maintain this level and that their performance will continue to be reviewed as with any other employee.

If performance subsequently falls below acceptable levels within short time scales, depending on the circumstances, it may be appropriate to deal with this lapse by continuing the formal process rather than starting at the beginning of the procedure. In deciding the most appropriate way to proceed, consideration should be given to whether the circumstances surrounding the current fall in performance are similar to those identified previously.

If the employee's performance continues to lapse despite being provided with the appropriate support as detailed above, it may be reasonable to move directly to Stage 4, (see 4.5), rather than commencing the process again. It is important that there is documentation to support this decision.

4.4.2. Improvement but not to acceptable levels/standards

Where there is an improvement; but acceptable levels/standards are not being met, it may be necessary to continue to review progress. At this stage, the manager should explore the reasons why enough improvement has not been made and agree:

- further measurable targets within the scope of the job description for the post;
- further suitable training/coaching to assist the employee in improving their skills and abilities to the required level.

In such circumstances, a suitable date should be agreed for a further review meeting to review performance. Following this, the situation should continue to be monitored to consider whether further review meetings or a capability hearing/redeployment should be considered.

The employee should have the targets set and future arrangements confirmed in writing, through the production of a new or revised Performance Improvement Plan.

There may be occasions where, even though there is some improvement, the circumstances are such that the manager/head teacher considers further opportunity to improve will not lead to the attainment of acceptable standards. In such circumstances, the manager may make the decision to proceed to Stage 4 (see 4.5) or Stage 5 (see 4.6).

4.4.3. No Improvement in Performance

If there has been no improvement in performance, the employee should be advised of the seriousness of the situation and of the potential implications of continued poor performance as follows:

- Agreed redeployment to a post which is more suited to the employee's capabilities – Stage 4 or, where this is not possible;
- Referral to a Capability Hearing - Stage 5.

4.5. Stage 4 – Redeployment.

Consideration of redeployment would normally be the next stage of the process. This consideration will take account of an assessment of the capabilities of the employee. It should be noted that redeployment may not always be available but should always be investigated and considered. Consideration to redeploy normally occurs following Stage 3 but can be discussed with the employee at any review meeting where appropriate.

Where redeployment may be an appropriate option, the manager should discuss the employee's continued poor performance and consider the remaining options for dealing with the situation at the review meeting.

At this stage, the principle of redeployment must be agreed with the employee before progressing.

If the employee advises that they do not wish to be considered for redeployment, they should be made aware that the alternative at this stage may be referral to a Capability Hearing and the possible outcome of this hearing.

Redeployment opportunities should be sought in line with the Council's Redeployment Policy and Procedure.

The objective of redeployment in this context is to identify an available post which appears more suitable to the employee's assessed ability. Where such a position is identified, in accordance with the Council's Redeployment Policy and Procedure, the employee will be offered this position on the salary and conditions relevant to the new post.

4.6. Stage 5 – Capability Hearing

Where no suitable alternative employment can be identified, consideration should be given to terminating employment on the grounds of capability. See Section 8 for guidance in relation to arranging a capability hearing.

5. Capability due to Lack of Necessary Qualifications

5.1. General Principles

For either legal and/or contractual reasons specific posts within the Council require individuals to hold either a specific qualification or level of qualification i.e. a degree in Social Work to be a Social Worker or an SVQ to work as a Social Care Assistant, Home Carer or Early Years Practitioner. These required qualifications must be clearly specified as essential criteria in the Person Specification for the post.

Managers/Head Teachers are responsible for ensuring that successful candidates have the essential qualifications for the post to which they are being recruited prior to commencement of employment. This is normally done through seeing and taking copies of original qualification certificates as part of the recruitment process for the post.

When determining whether a specific qualification is in fact essential for a post; managers should be clear that an essential qualification is one that the job cannot be done without, therefore any individual not holding the qualification is not considered able to undertake the role and would not meet the criteria for short listing to be interviewed or appointed. Additionally; should an unfair dismissal claim be lodged with an Employment Tribunal it would be the Council's responsibility to prove that a qualification is an essential prerequisite of the post.

5.2. Offers of Employment – Subject to gaining Relevant Qualification

In most situations an individual must hold the specified essential qualification to be able to be short listed for interview for a post and offered employment in the role. Other than for some Scottish Social Services Council (SSSC) registerable posts, offers subject to achieving the essential qualification will not normally be made.

It is acknowledged that there may be very exceptional circumstances where an appointment could be able to be made subject to the individual gaining the essential qualification for the post within an agreed timescale. This would be subject to agreement with the relevant Executive Director/Head of Service and Human Resources in advance of any such offer being made.

Any such decision could present possible risks to the Council in terms of fairness and equality of opportunities and could impact on the grading/salary for the post i.e. any offer of employment subject to achieving the necessary qualification may be on a lower grade/salary. It would not be normal that the grade/salary for a post would remain the same where an appointment is made without a candidate holding the necessary essential qualification.

Where it has been agreed that an offer of employment is able to be made subject achieving an essential qualification the successful interview must be advised of this and any impact in terms of salary/grade at the verbal offer stage. In these circumstances

the following clauses will be included in any letter of appointment and contract of employment issued to the employee:

- This appointment is subject to you successfully gaining {required essential qualification taken from the person specification for the post}, within {specified timescale in months/years} of commencement.
- Failure to achieve the required qualification within the specified timescale will result in you being unable to continue to be employed in this post and could result in the termination of their employment based on capability.

Managers/Head Teachers are responsible for ensuring that where it has been agreed that an appointment can be made subject to achieving an essential qualification that this is achieved, or where it is not, that this is managed in line with the provisions of section 5.4 Failure to Achieve a Qualification within the agreed timescale for further information.

5.3. Offers of Employment – Subject to gaining Relevant Qualification (SSSC Registered Posts)

For many posts governed by the Scottish Social Services Council (excluding Social Workers), there is the ability for the Council to choose to appoint an individual to the post without the required essential qualification, subject to the individual achieving the qualification within their first period of SSSC registration (normally 5years). This is not a mandatory requirement and can be reviewed at any stage.

In these circumstances the person specification for the post must clearly state this and consideration must be given to whether this impacts on the grade for the post i.e. is there a requirement for the grade for the post to be a split grade i.e. a lower grade for appointment without the qualification and a higher grade that is only payable on holding or achievement of the essential qualification. Advice should be sought from Human Resources in this respect.

5.4. Failure to achieve a Qualification within the Agreed Timescale

If the employee is subsequently unsuccessful in gaining the relevant essential qualification within the specified timescale, consideration must be given to the appropriateness of the individual continuing to undertake the duties of the role, without holding the essential qualification for the post.

Managers are reminded that an essential qualification is critical to the post and will have been considered in determining the grade and salary.

In determining the appropriate way forward, advice should always be sought from Human Resources and it may be necessary to convene a Capability Hearing as detailed in section 8, the outcome of which could be termination of employment.

The employee should be given the opportunity to complete the course of study/undertake their qualification and where possible, without having to retake the entire qualification and be allowed one opportunity to take re-sit any examination.

These provisions are not intended to infer that a further opportunity to re-attempt any qualification in its entirety would be reasonable or will be offered.

In exceptional circumstances, where the examining body allows, it may be considered appropriate to allow more than one opportunity to undertake the re-sit of any final examination. For example; this action may be appropriate where the employee's performance has been affected by personal problems or circumstances relating to their employment. Consideration should also be given to the impact on service delivery and additional cost to the Council of allowing a further re-sit examination.

The manager should agree with the employee any essential work experience, assistance and coaching they may require, and ensure that arrangements are put in place to accommodate this requirement.

As soon as possible, following the release of the initial results, but prior to the resit examinations taking place, a meeting should be arranged with the employee. The employee must be offered the right of representation at all subsequent meetings.

The meeting should be to:

- discuss the need for the employee to hold the relevant qualification to undertake the duties of the post successfully;
- explore the reasons for the employee not attaining the qualification, (e.g. health issues; work/ time related pressures);
- offer appropriate assistance and support to the employee;
- confirm the terms of the offer of appointment and the consequences of further unsuccessful examination results, i.e. that this could result in termination of their employment.

As far as possible a sympathetic approach should be taken while dealing with these situations.

All discussions should be documented and confirmed to the individual in writing.

Where, pending the retake of an essential qualification, the current qualification expires, and this would no longer enable an employee to undertake the work of that role e.g. a Pool Lifeguard Qualification expiring, if there was no short-term alternative work for that individual, a period of suspension on no-pay may be necessary.

If the employee is successful in obtaining the qualification, their employment position in respect of this result should be confirmed to them in person, and then confirmed in writing.

If the employee is unsuccessful in obtaining the qualification and there is no further opportunity being offered for them to re-sit the examination, a Capability Hearing should be arranged as detailed in section 8.

6. Capability due to Lack of Professional Registration

6.1. General Principals

For either statutory or contractual reasons specific posts within the Council require individuals to hold an appropriate professional registration that is a prerequisite to the job i.e. GTCS registration for Teachers; SSSC registration for Social Workers etc. These required professional registrations, including the specified level (where this is appropriate), must be detailed in the job description and as essential criteria in the Person Specification for the post.

Managers/Head Teachers are responsible for ensuring that successful candidates have the appropriate professional registration for the post to which they are being recruited prior to commencement of employment.

6.2. Offers of Employment subject to achieving appropriate Professional Registration

Where professional registration is an essential criterion for the post, other than for some SSSC registerable posts (see section 6.3 below) the post is unable to be carried out without this professional registration. On that basis an offer of employment will not be able to be made to a post that requires the applicant to be registered with a specific professional body, subject to the applicant achieving this later.

6.3. Offers of Employment subject to achieving appropriate Professional Registration SSSC Registered Posts

For all SSSC registerable posts applicants must be registered with the SSSC as this is an essential requirement. For all SSSC registerable posts (except Social Workers) post holders must either be registered on starting the role or register within the first six months of taking up employment in a Social Services role. For clarity 'taking up employment', is either the date at which the person starts work in the post or the date on which an individual is issued with a letter offering to put them on a list of individuals available for casual./relief/supply work

In these circumstances the job description and person specification for the post must clearly state this is a requirement and any offer of employment will be conditional on achievement of this.

Whilst registration is an individual's responsibility, managers of social services workers must ensure that where an individual's appointment is subject to achieving registration within the first 6 months that this is achieved and where registration is not achieved that the individual does not continue to work in the role and this is dealt with in line with section 6.4 below.

6.4. Failure to evidence Registration with a Professional Body

In the circumstances that an applicant is unable to evidence the required professional registration either at interview or through the pre-employment checking process, no confirmed offer of employment should be made and it may be necessary to look to withdraw any provisional offer of employment.

Additionally; in these circumstances' individuals must not be started in the post or asked to undertake any work in the post including attending induction/training.

For SSSC registerable posts (excluding Social Workers, which are covered by the paragraph above), failure to evidence registration within the initial 6-month period, will result in the individual legally being unable to continue to work in that post and a Capability Hearing should be arranged as detailed in section 8, the outcome of which could be termination of employment.

6.5. Failure to evidence continued Registration on Request

Where professional registration is an essential requirement for a post, it is a statutory requirement and/or contractual requirement that employees in these posts maintain their professional registration for the duration of their employment with the Council in this post and evidence this upon request.

It is a manager's/Head Teacher's responsibility to ensure that in line with the relevant renewal/re-registration period for the relevant professional body that evidence of the continuing registration is provided and maintained on file for each employee (normally this will be an annual process).

Should an individual fail to evidence upon request their continued registration with a professional body, consideration must be given to the appropriateness of the individual continuing to undertake the duties of the role, without evidence of their required registration. Remembering that in the absence of evidence of professional registration the individual may legally be unable to continue to work in that post and/or be in breach of their terms and conditions of their contract of employment.

Although the Council Lead SSSC Signatory (Chief Social Work Officer) will receive automatic notification once a SSSC registered employee has been removed from the register, it will not give clarity on the reasons for this. Managers remain responsible for ensuring, well in advance of any re-registration date, that this process is underway by the individual employee to avoid them being removed from the register and being unable to work in that role.

Managers/Head Teachers, with advice from Human Resources will need to give prompt consideration as to whether it is possible for the employee to continue to work in the post without evidence of their registration. This may require consideration as to whether short-term, temporary redeployment to non-registerable work may be appropriate or possible.

Where short-term, temporary redeployment to a non-registerable post on a temporary basis is not considered to be appropriate or possible, it may be necessary to consider the suspension of the employee, pending resolution of the situation, particularly where they are legally unable to work in the role.

In the circumstances where an individual has failed to evidence their continued professional registration, which is their legal/contractual obligation, any possible short-term, temporary redeployment to non-registerable work would be paid at the relevant pay and terms and conditions for that post, no salary protection would be payable.

It would also be the Council's normal position that where a period of suspension due to an individual failing to evidence continued professional registration, this would be on no-pay, as it is an individual legal/contractual obligation to achieve, maintain and evidence their continued registration.

Suspension of any employee must be authorised by an Executive Director/Head of Service with advice from Human Resources and would always be considered a last course of action.

Prompt consideration will also need to be given as to how to resolve this matter, which may include a Capability Hearing being scheduled in line with Section 8, the outcome of which could be termination of employment.

6.6. Deregistration with SSSC due to Failure to Pay fees/[Renew Registration](#)

With the registration of Social Services workers with the SSSC, the Council automatically receive notification where an individual has been removed from the register for any reason, including non-payment of the annual registration fee.

Whatever the reason for deregistration, the outcome is the same, the individual cannot legally continue to undertake work in a registerable post without SSSC registration.

In the circumstances that the Council receive notification of de-registration [for reasons including non-payment of fees or failure to renew registration](#), urgent consideration will need to be given in respect of how to progress with this. [Please](#) remember that in the absence of SSSC registration the individual is legally unable to continue to work in that post and may be in breach of their terms and conditions of their contract of employment.

The relevant Head of Service, with advice from Human Resources will need to consider the most appropriate way forward. The SSSC advise that re-registration for any purpose including for non-payment of fees can take up to 60 days.

This may require consideration as to whether short-term, temporary redeployment to non-registerable work may be appropriate or possible.

Where redeployment to a non-registerable post on a temporary basis is not considered to be appropriate or possible, it may be necessary to consider the suspension of [the](#) employee, pending resolution of the situation.

In the circumstances where an individual has failed to pay their annual fees and had been de-registered by the SSSC as a result, any possible short-term redeployment to non-registerable work would be paid at the relevant pay and terms and conditions for that post, no salary protection would be payable.

It would also be the Council's normal position that where a period of suspension due to an individual having failed to pay their annual fees and had been de-registered by the SSSC as a result, this would be on no-pay, as it is an individual's legal and/or contractual obligation to achieve, maintain and evidence their continued registration.

Suspension of any employee must be authorised by an Executive Director/Head of Service with advice from Human Resources and would always be considered a last course of action.

Consideration will also need to be given as to how to resolve this matter, which may include a Capability Hearing being scheduled in line with Section 8, the outcome of which could be termination of employment.

6.7. Deregistration with a Professional Body (Conduct or Health)

In the circumstances where an individual employee is either de-registered by a professional body or the Council receive notification that the professional body is investigating/considering possible deregistration of an employee, prompt consideration must be given to the appropriateness of the individual continuing to undertake the duties of the post in those circumstances.

Where redeployment on a temporary basis is not considered to be appropriate or possible, suspension of the employee, pending resolution of the situation, may need to be considered.

Consideration may also need to be given to the possibility of conducting a separate disciplinary investigation into the circumstances surrounding potential de-registration, dependant on the individual circumstances of the case. Where it is necessary to instigate a precautionary suspension to enable investigation under the Council Disciplinary procedures, suspension would usually be with normal contractual pay.

As soon as possible, following notification of de-registration (conduct or health), or failure to evidence continued registration, the Manager/Head Teacher should arrange to meet with the employee, normally with Human Resources.

The employee should be offered the right of representation at all subsequent meetings. The meeting should be to:

- Discuss the need for the employee to hold and evidence the relevant professional registration to undertake the duties of the post successfully;
- Explore the reasons for the employee being de-registered or failing to evidence continued registration upon request;
- Offer appropriate assistance and support to the employee;
- Confirm the terms of the offer of appointment and the consequences of failure to hold and/or maintain professional registration, i.e. that this could result in termination of their employment.

As far as possible a sympathetic approach should be taken while dealing with these situations.

All discussions should be documented and confirmed to the individual in writing.

If the employee is successful in any appeal against de-registration or can evidence their continued registration with the appropriate body, their employment position in respect of this outcome should be confirmed to them in person, and then confirmed in writing.

7. Capability due to being listed/barred under the Protection of Vulnerable Groups (PVG) Scheme

7.1. General Principals

Specific posts which are defined as undertaking regulated work with Children and/or Adults under the Protection of Vulnerable Groups (Scotland) Act₂ require individuals to hold or be able to achieve PVG Scheme Membership. Managers/Head Teachers are responsible for ensuring that successful candidates have the relevant scheme membership prior to commencement of employment.

In any decisions relating to employment and the appropriateness of any criminal conviction history, the Council will be guided in a large part by the information provided by Disclosure Scotland.

Other than where an individual is listed/banned from undertaking regulated work with children and/or adults the Council is not bound by a decision by Disclosure Scotland or Scottish Ministers relating to an individual not being listed/banned where they have criminal convictions that are considered relevant to their post. Guidance in respect of the process to follow when assessing the relevance of criminal convictions is included at Appendix 3.

The Council, as the legal employer is free to make an independent decision that even though an individual may be a PVG scheme member, the criminal conviction history makes it not appropriate to employ an individual in a post.

7.2. Starting Employment subject to achieving PVG Scheme Membership

An individual cannot start work in a post requiring PVG scheme membership before this membership is in place, the potential risk that this exposes vulnerable service users and the Council is considered too great and it is a criminal offence for the Council to allow this to happen.

7.3. Notification of Consideration for Listing – New Applicant

Where a PVG Scheme membership request for a new applicant is returned indicating that the individual is under consideration for listing by Scottish Ministers, this does not automatically mean that an offer of employment would not be made.

An offer of employment would not be made to this applicant until confirmation is received from Disclosure Scotland of the outcome of the consideration process.

Where the individual is barred from regulated work this should be dealt with in accordance with 7.5 below. Where the individual is not barred from regulated work, the Head of Service along with Human Resources will review the criminal conviction history to assess its relevance to the post applied for. Guidance for Heads of Service in respect of the process to follow when assessing the relevance of criminal convictions is included at Appendix 3.

It is expected that this consideration should include an opportunity for the individual applicant to give further details relating to the history. A decision will then be made based on a risk assessment as to whether an offer of employment will be made or not.

7.4. Notification of Consideration for Listing – Existing Employee

Where a PVG Scheme membership request for an existing employee of the Council is returned indicating that the individual is under consideration for listing by Scottish Ministers, this does not automatically mean that an offer of employment would not be made for the new post or that it is not appropriate for the individual to continue in their existing post.

The Head of Service with advice from Human Resources would need to consider the relevance of the identified criminal conviction history, (this should include an opportunity for the individual applicant to give further details relating to the situation). Guidance for Heads of Service in respect of the process to follow when assessing the relevance of criminal convictions is included at Appendix 3.

Where the view is that the criminal conviction history has an impact on the individual's existing post, a Capability Hearing should be arranged as soon as possible as detailed in section 8 to consider the potential implications and the way forward.

In respect of any new post applied for, this would be considered in accordance with 7.3 above, to ensure fairness and consistency of approach.

7.5. Notification of Listing/being Barred from Regulated Work – New Applicant

It is a criminal offence for the Council to employ an individual in a post working with children and/or adults where they have been barred from undertaking such work.

Where a PVG scheme membership application for a new applicant is returned indicating that they are barred from working with children and/or adults and this is relevant to their application for employment, an offer of employment cannot be made, and any provisional offer must be withdrawn.

The Council would also need to refer the fact that the individual who is barred has applied for regulated work with children and/or adults to Disclosure Scotland as it is a criminal offence for the individual to apply for such work and for the Council not to refer this matter.

7.6. Notification of Listing/being Barred from Regulated Work – Existing Employee

Where a PVG scheme membership application for an existing member of staff, either through the retrospective checking process or through application for a new post is returned indicating that they are barred from working with children and/or adults, the implications for their employment need to be considered as a priority by the Head of Service with advice from Human Resources.

Where there is no impact of the barring decision to the employees existing work with the Council (i.e. the work is not classed as regulated work), their employment in this post will not be affected. However, the offer of employment to the new post will be withdrawn and a referral made to Disclosure Scotland of the fact that a barred individual has applied for regulated work.

Where the barring decision also impacts on the employee's existing work with the Council, the employee will not be able to continue to undertake this work. Consideration of short-term, temporary redeployment to non-regulated work should be considered, however where this is not possible the employee will require to be suspended on full-pay as a precautionary measure, as to allow the employee to continue undertaking regulated work is a criminal offence.

A Capability Hearing should be arranged as soon as possible as detailed in section 8 to consider the potential implications for the employees continued employment with the Council.

7.7. Notification of a Conviction for a Scheme Member by Disclosure Scotland

All employees have a contractual obligation to notify their manager of any charge, prosecution or conviction. For employees who are PVG scheme members the Council may be notified directly by Disclosure Scotland of any conviction that they consider could have a possible impact on their post.

On receipt of such notification the implications for their employment need to be considered as a priority by the Head of Service with advice from Human Resources.

Where the notification advises that the employee is either being considered for listing (see 7.4) or is now barred from undertaking regulated work with children and/or adults (see 7.6) this will be dealt with in accordance with the procedures notified above.

Where the notification does not advise of either consideration for listing or that the individual is barred from regulated work, the Head of Service with advice from Human Resources will need to consider the relevance of the conviction to their employment. Guidance for Heads of Service in respect of the process to follow when assessing the relevance of criminal convictions is included at Appendix 3.

Where it is considered that it is no longer appropriate for that employee to continue in the post because of their conviction, a Capability Hearing should be arranged. In the interim consideration will need to be given either to temporary redeployment or precautionary suspension.

It should be noted that from a fairness and consistency perspective that the decision as to whether the existing member of staff can continue in their post should be in accordance with if they were a new applicant for employment in that post and the criminal conviction history was disclosed, would an offer of employment be made.

8. Capability Outcomes

8.1. General Principles

An employee will only normally be referred to a capability hearing when one of the foregoing procedures has been fully implemented and the employee has been given reasonable opportunity to improve. There may however be circumstances when demonstration of the capability issues of the employee is such, that investigation of the initial facts of the case may lead management to consider that a capability hearing is appropriate at an early stage i.e. where an employee does not achieve the relevant qualification, or they are barred from undertaking regulated work.

The employee has the right to be represented at the meeting by either a work colleague or Trade Union representative/Official employed by a Trade Union.

The employee should be provided with 7 days-notice of the meeting in writing and should be advised that a possible outcome from the meeting could be the termination of their employment with the Council on the grounds of Capability.

The outcome of the meeting/ hearing must be confirmed to the employee in writing within 7 days.

The employee has the right to appeal against termination of their employment on the grounds of capability.

8.2. Capability Hearing - Arrangements

Irrespective of the reason for Capability i.e. performance, absence, lack of qualification etc. where a decision is taken to consider the potential to dismiss an employee on the grounds of capability, the case will normally be referred to a formal Capability Hearing.

This ensures that the circumstances of the case are reviewed and considered by an independent Senior Manager and allows the employee a final opportunity to present any mitigating information prior to a decision being made.

Generally, the only exception to this would be in the circumstances that Occupational Health have issued the employee with a Certificate of Permanent Medical Incapacity/ the SPPA Medical Adviser has confirmed Retirement on the Grounds of Ill Health (for Teachers) and the employee has indicated their agreement with this decision.

In these circumstances it is possible to meet with the employee on a less formal basis, to make them aware that their employment is to be terminated on a given date and of entitlements they are due to receive.

If during this meeting, it becomes apparent that the employee disputes the termination of their employment, this should be discussed with them. If there is no agreement, consideration should be given to whether it is necessary to refer the employee to a formal capability hearing.

8.3. Capability Hearing - Process

The format of the hearing is outlined as follows:

The hearing should be convened by an Executive Director or Head of Service who was not involved at any previous stage of the procedure;

- The employee should be given 7 days' written notice of the date of the hearing and informed of their right to provide supporting papers;
- A Human Resources Adviser will be present to advise the Chair of the hearing;
- The manager progressing action previously, in relation to the employee's performance, will present management's case (i.e. this will be the manager who has met with the employee throughout the process). The presentation will include providing evidence of steps taken to assist the employee and confirmation of agreements reached/standards set/evidence of where and how the required standard was not achieved
- The employee or their representative can present their case.

- Questions may be asked as appropriate.
- On consideration of all the facts, the Chairperson should, where possible, communicate their decision in person to the employee verbally and confirm this in writing within 7 days.

8.4. Capability Hearing - Outcomes

The main options open to the Chair of the Hearing on consideration of the facts of the case are:

- Employee's performance is at an acceptable level for the post, so no further action is taken;
- redeployment
- seek further information
- allow additional time for improvement
- dismissal

8.4.1. Redeployment

In some cases, redeployment is likely to have been considered, and the appropriate process undertaken prior to the capability hearing. If it is the case however, that this has not been considered previously, (for example, if the employee was unwilling to consider the option), an assessment should be made as to whether it is appropriate in the circumstances.

If it is considered that it may be appropriate to allow time for redeployment opportunities to be sought, this should be made clear to all parties present and explain the process which will be followed to undertake a redeployment search in accordance with the Council's Redeployment Policy and Procedure.

In these circumstances, the hearing should be adjourned to allow a reasonable period for the redeployment search to be undertaken.

At the end of the period allowed for the search to be undertaken, the hearing should then be reconvened to discuss the outcome of this search with the employee. If a suitable redeployment opportunity is found arrangements should be made for the employee to commence this post in accordance with the Council's Redeployment Procedure.

Where no redeployment opportunities are available, the reconvened hearing will normally result in the employee being dismissed on the grounds of capability.

8.4.2 . Seek further information/allow additional time for improvement

If it is considered that the facts presented do not warrant the employee being dismissed on the grounds of capability, it is an option to adjourn the hearing for a period to:

- give the employee an additional opportunity to improve their performance to meet further reasonable agreed targets within defined time scales; or
- allow for additional information/clarification to be obtained in respect of points raised at the hearing

In such circumstances the reasons for the adjournment should be clearly confirmed to those present and confirm these in writing to the employee. This should include: the purpose of this adjournment, any targets which require to be met, how these will be measured and the time scales which have been agreed for review and that details of the support to be provided to the employee are documented.

The date when the hearing will be reconvened should be confirmed to all parties present. This should allow reasonable time for either a further investigation to be concluded or for the required improvement in performance to have been achieved.

On reconvening the hearing, there should be an assessment of the additional information obtained or the details of the performance of the employee during the period of adjournment and take a decision as to the most appropriate course of action.

It may be the case that there is an improvement in performance, or additional information is obtained which leads to the conclusion that dismissal is not appropriate. In such circumstances the decision should be confirmed in writing to the employee, detailing the reasons for coming to this conclusion along with the required level of performance expected in future.

If no additional evidence is provided to the contrary, or the required improvement in the employee's performance has not been attained during the monitoring period, the reconvened hearing will normally result in the employee being dismissed on the grounds of capability.

8.4.3. Dismissal

If it is considered that dismissal is appropriate, this must be clearly stated in the letter confirming the outcome of the capability hearing, together with the effective date for the dismissal. Normally employees dismissed on the grounds of capability will receive payment in lieu of notice and outstanding holiday pay.

A 'Termination of Employment' form must be completed as soon as possible, sending copies to the Payroll and Human Resources (to stop any possible overpayment payment of salary/wages).

Before taking action for dismissal in cases involving performance issues relating to a Teacher the Service must ensure that the Framework on Teacher Competence has been followed. Where a dismissal of a Teacher is being considered, the Teacher must be informed in writing that he/she may ask for his/her professional association to be formally notified.

Should a claim be made in respect of a capability dismissal, the Council would have to be in a position to demonstrate the employee's unsuitability and the actions which have been taken to improve their performance. It is important therefore that the Chairperson of the hearing is satisfied that the decision to dismiss is a reasonable one which can be supported by the evidence provided. The decision to dismiss on this basis should not be contradicted by providing a misleading reference on dismissal. Managers should therefore seek advice from their Service Human Resources Adviser before providing the employee with any reference in these situations.

8.5. Right to Appeal

Every employee has the right to appeal against dismissal on the grounds of capability.

The Chairperson of the Capability Hearing should advise the employee of this right at the end of the capability hearing and within the letter subsequently issued.

Any appeal should be made in writing to the Head of Human Resources and Performance within 14 days of receipt of the letter confirming the decision to dismiss.

Any appeal against dismissal will be heard by the Staff Appeals Sub-Committee of the Council. Appeals will be arranged as soon as reasonably possible, normally within 28 calendar days, however appeals heard by the Staff Appeals Sub-committee may take longer to arrange, particularly during periods of Council recess.

There is no further internal right of appeal beyond the Staff Appeals Sub-Committee of the Council.

9. Appendices

Appendix 1. GTC Scotland – Framework on Teacher Competence

Appendix 2. Performance Improvement Plan Template

Appendix 3. Process for the assessment of Relevance of Criminal Convictions

Appendix 1. GTC Scotland – Framework on Teacher Competence

1.1. Background

This Framework on Teacher Competence (FTC) replaces the Code of Practice on Teacher Competence issued by the General Teaching Council for Scotland (GTC Scotland) in September 2002 and comes into effect on 2 April 2012.

The FTC takes into account the legislative changes brought about by the Public Services Reform (General Teaching Council for Scotland) Order 2011, with particular reference to GTC Scotland's duty to ensure that those who are registered meet the standard of professional competence expected of a registered teacher and are fit to teach. Having attained the Standard for Full Registration (SFR) a registered teacher must maintain that standard of professional competence throughout his/her career. Accordingly, the FTC should be read and used in conjunction with the current SFR which is the standard of professional competence expected by GTC Scotland of fully registered teachers. Both of these documents should be an integral part of the employer processes in the management of any teacher competence issue arising.

Purpose and Scope

In regard to the process for dealing with short-lived and long-running under-performance, the purpose of the FTC is to:

- set out and explain the practical steps involved;
- affirm the central role of the SFR in this process and as the baseline professional standard for teacher competence;
- encourage good and consistent practice amongst all employers;
- encourage parties to operate within procedural timescales which are efficient and reasonable, taking into account all the circumstances and complexities of the individual case, as well as the public interest;
- ensure fairness to the registered teacher and also ensure a quality educational experience for children, pupils and learners in our schools.

The FTC applies only to fully registered teachers as there are different and separate provisions to manage under-performance of provisionally registered teachers. It should be noted that where the alleged under-performance relates to administrative/managerial duties of a promoted teacher, similar procedures may be applied but always in the knowledge that GTC Scotland procedures and Fitness to Teach Panel outcomes can only relate to teaching competence and not to administrative/managerial competence.

1.2. Procedures for Dealing with Under-Performance

The procedures assume that the teacher has been performing at a competent level up to the point at which temporary under-performance enters Stage 1 of the FTC.

Short-lived under-performance is used to describe a problem which, with support and guidance, will be overcome by the teacher within a short period of time. In Stages 1 and 2 of the following procedures, it is envisaged that the teacher's problem is one of short-lived under-performance.

Long-running under-performance is the term used to describe the problem when Stage 3 of the procedures is implemented. By this Stage, although support and guidance and professional development opportunities have been offered to the teacher, this has not resulted in the teacher maintaining the level defined in the SFR.

GTC Scotland Professional Update Arrangements

Professional Update does not measure teacher competence: it will focus on continuous improvement rather than on determining whether or not a teacher is, or has remained, competent. In addition, it is hoped that the small number of cases which lead to a formal review of the competence of an individual teacher may be assisted by the improvements in professional review and development arising from the introduction of Professional Update.

Alleged competence issues will therefore continue to be handled by employers in line with this Framework on Teacher Competence, with cases referred to GTC Scotland, as required, under Stage 4 for consideration under GTC Scotland's Fitness to Teach procedures.

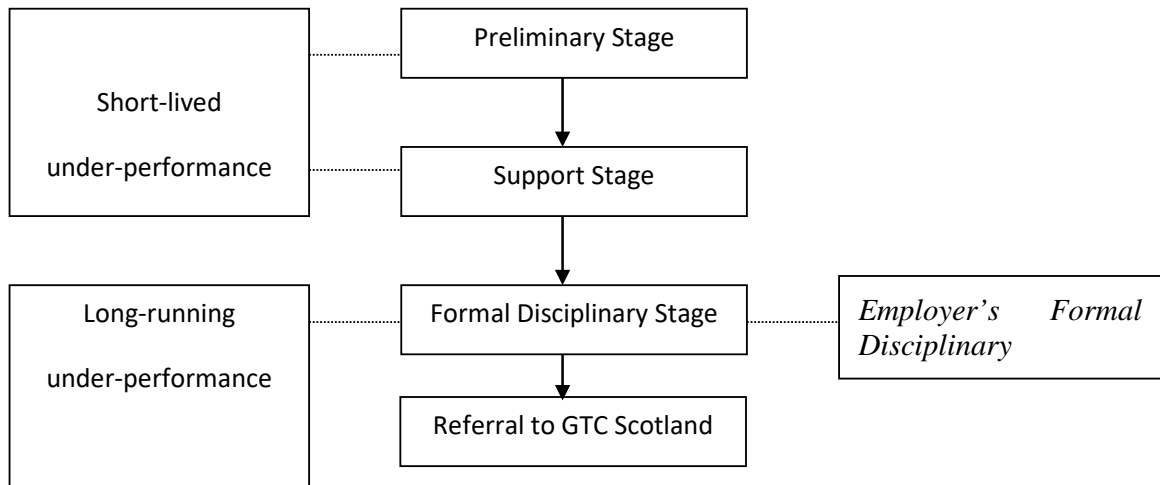
1.3. Overview

Employer procedures, operating in conjunction with the FTC procedures, must be in line with relevant provisions of the current ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary and Grievance Procedures.

Throughout all stages of the process GTC Scotland would expect to see evidence of:

- consistent and continuing reference to the SFR;
- a well-structured and documented process which –
 - sets out and records the evidence gathered, support and development provided, and reasons for the decisions made at each Stage;
 - is fair and reasonable, with clear objectives linked to either the short-lived or long-running underperformance;
 - is aimed to improve and not punish the individual concerned, with an indication of reasonable support and professional development offered;
 - is tailored to the individual circumstances;
 - complies with the terms of the Equality Act 2010.

There are four stages in the procedures:



Stage 1: Preliminary

- Although the Preliminary Stage does not form part of the employer's formal disciplinary procedures, the teacher should be made aware of the potential for matters to progress to formal procedures and that reliance may be placed upon evidence gathered at Stages 1 and 2.
- It is assumed, at this Stage, that the problem is one of short-lived under-performance.
- Teachers are encouraged to invite a colleague or a representative from their Professional Association to accompany them to any meetings.
- Informal meetings should be held between the teacher and a senior or appropriate colleague to discuss identified areas of under-performance. During these informal discussions the teacher should be encouraged to participate fully in identifying the causes of the under-performance and suggesting possible remedies. Advice and guidance should be offered by the senior or appropriate colleague to support improvement.
- At the conclusion of the first informal discussion a date should be agreed by the teacher and the senior or appropriate colleague concerned to review performance as soon as reasonably possible. Depending on the context of the situation a reasonable length of time should be given for the teacher to reach the required standard.
- At the conclusion of the meeting to review performance, i.e. whether or not the required standard has been achieved, in the first instance an oral report should be given to the teacher indicating the outcome. Two outcomes are possible:
 - Outcome 1

Where improvements have been made to the required standard, no further action will be taken. The teacher should be informed of this decision in writing.

- Outcome 2

Where improvements have not been achieved to the required standard, the teacher should be informed that the matter will be referred to the head teacher who will consider whether Stage 2 of the procedures should be implemented. The teacher will be informed of the head teacher's decision and the underpinning reasons in writing.

Stage 2. Support

- Although the Support Stage does not form part of the employer's formal disciplinary procedures, the teacher should be made aware of the potential for matters to progress to formal procedures and that reliance may be placed upon evidence gathered at both Stages 1 and 2.
- It is assumed, at this Stage, that the problem is still one of short-lived under-performance.
- Teachers are encouraged to invite a colleague or a representative from their Professional Association to accompany them to any meetings.
- The teacher should be informed by the head teacher of:
 - the specific aspects of the SFR which are to be addressed;
 - the proposed mechanisms which will be put in place to support the teacher;
 - appropriate professional development opportunities which can be accessed.
- Discussions should be held between the teacher and head teacher to agree the way ahead as soon as is reasonably possible. During these discussions the teacher should be encouraged to address the issues openly in order to:
 - clarify the areas of under-performance;
 - suggest forms of support which he/she would find helpful;
 - agree appropriate professional development opportunities.

Consideration should be given to all reasonable requests made by the teacher.

At the conclusion of these discussions the head teacher should give a broad indication of the support mechanisms and professional development opportunities which will be made available. Dates for an Interim Review meeting and a Final Review meeting will be confirmed as soon as is reasonably possible.

As soon as possible after the discussion the head teacher should confirm in writing:

- the improvements to be made;
- the support mechanisms and professional development package to be provided;
- confirmation of the review dates.

In order to assist the teacher reach the required standard, a written timeframe should be agreed. This should outline the key milestones and must be reasonable and have due regard to the circumstances of the individual case.

- At the conclusion of the Final Review meeting the teacher should be informed of the outcome.

Two outcomes are possible:

- Outcome 1

Where improvements have been achieved to the required standard, no further action will be taken. The proceedings will be deemed to be complete. The teacher should be informed of this discussion in writing.

- Outcome 2

Where improvements have not been achieved to the required standard, the teacher should be informed that formal disciplinary procedures will be implemented. This decision and the underpinning reasons should be communicated to the teacher in writing.

The teacher should be advised of his/her statutory and contractual rights to be accompanied at Stage 3.

Stage 3. Disciplinary

- The Disciplinary Stage comprises the employer's formal disciplinary procedures.
- The problem is now considered to be one of long-running under-performance.
- The teacher should be advised of his/her statutory and contractual rights to be accompanied.
- A comprehensive overview report should be produced by the head teacher evidencing:
 - the particular sections of the SFR in which he/she is alleging that the teacher is under-performing;
 - how and why it is alleged that the teacher has fallen below the required standard of performance;
 - the support mechanisms and professional development opportunities offered to the teacher;
 - the process and documentation associated with Stages 1 and 2;
 - the performance milestones during the process.
- The above information:

- may be considered at subsequent stages in the employer's formal disciplinary proceedings;
- will be required by GTC Scotland should the case move to Stage 4.

Stage 4. Referral to the General Teaching Council for Scotland

- A case must be referred by the employer (or former employer) to GTC Scotland under the terms of Article 25 of the Public Services Reform (GTC Scotland) Order 2011 if:
 - the teacher is dismissed; or
 - the teacher resigns or leaves his/her post in the context of a possible dismissal.

Such referrals should be made to the Fitness to Teach Department at GTC Scotland.

- The employer must explain to GTC Scotland the circumstances which caused them to dismiss the registered teacher or to conclude that they would have, or might have, dismissed the registered teacher.
- Information relating to GTC Scotland's procedures for dealing with such cases can be found in the Fitness to Teach and Appeals Rules 2012.

Appendix 2. Performance Improvement Plan Template

Employee: _____

Post: _____

Service: _____

Work Location: _____

Accompanied by: _____

Manager Conducting Meeting: _____

Accompanied by: _____

Date of Meeting: _____ **Time of Meeting:** _____

Stage 1 Meeting **Stage 2 Meeting** **Stage 3 Meeting**

Dates and summary of any previous discussion(s) regarding Performance:

(Please attach any supporting information or documentation)

First area of under performance	
Any underlying or contributory factors identified	
Expected minimum standard of performance	
Agreed action by employee to meet required standard	
Agreed Support to be put in place by management	
Timescale for Improvement	

Second area of under performance	
Any underlying or contributory factors identified	
Expected minimum standard of performance	
Agreed action by employee to meet required standard	
Agreed Support to be put in place by management	
Timescale for Improvement	

Third area of under performance	
Any underlying or contributory factors identified	
Expected minimum standard of performance	
Agreed action by employee to meet required standard	
Agreed Support to be put in place by management	
Timescale for Improvement	

Fourth area of under performance	
Any underlying or contributory factors identified	
Expected minimum standard of performance	
Agreed action by employee to meet required standard	
Agreed Support to be put in place by management	
Timescale for Improvement	

Appendix 3. Process for the assessment of Relevance of Criminal Convictions

The Head of Service with advice from Human Resources should make an initial assessment as to whether the information provided has any potential relevance to the post. If there is clearly no potential relevance, the Head of Service will arrange for recruitment to be confirmed. However, if the check confirms a potentially relevant conviction or any other potentially relevant information, further exploration will be required. This will usually take the form of a meeting with the applicant/employee.

Where an applicant/employee has applied for more than one post within different services (e.g. casual/relief/supply list for classroom assistant/ carer). Human Resources will notify the relevant Head(s) of Service so that a joint meeting can take place. The purpose of the meeting is to enable the Head(s) of Service to undertake a thorough and fair risk assessment through a structured, open and honest discussion between all parties.

The suitability for employment of a person with a criminal record or who has other relevant information revealed in their check will vary. It will depend upon the nature of the job and the details and circumstances of any convictions or other relevant information. The discussion should cover these matters, in order that the applicant's criminal record or other relevant information and circumstances can be assessed in relation to the nature of the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. It should be remembered that no two offences are exactly alike and should not be treated so.

The following issues should be taken into consideration in preparing for the meeting and undertaking the risk assessment:

- The nature of the employment, as set out in the Job Description and Person Specification including the level of supervision the person will receive;
- The particular circumstances of the offence or other information disclosed including relevant information offered by the applicant;
- Whether the applicant's circumstances have changed since the offending behaviour etc.
- The seriousness of the offence or relevant information and its relevance to the safety of service users, customers, other employees and the public etc.
- The age of the applicant at which point the offence etc. was committed;
- The length of time since this occurred;
- Whether the applicant has a successful work history since the conviction and the nature of that work history
- Did the applicant declare their conviction as part of the recruitment process?

- Is there a history or pattern of behaviour or offending
- The Country in which the offence was committed – some activities are an offence in some countries and not in others
- Whether the behaviour has since been decriminalised by Parliament
- The degree of insight into the offending demonstrated by the candidate

Having considered all these matters carefully and thoroughly, the Head(s) of Service with advice from Human Resources should then come to a decision whether or not to appoint the individual. A written note should be made of the reasons for the decision which should be forwarded to Human Resources along with the PVG/Disclosure Certificate.

It should be noted that information from Disclosure Scotland can only be retained for a maximum of six months, no copies of PVG/Disclosure Certificates or correspondence should be retained by Services.

Minute

Asset Management Sub-committee

Thursday, 30 May 2019, 10:30.

Council Chamber, Council Offices, School Place, Kirkwall.



Present

Councillors W Leslie Manson, Norman R Craigie, Robin W Crichton, Steven B Heddle, John A R Scott, Graham L Sinclair and James W Stockan.

Clerk

- Hazel Flett, Senior Committees Officer.

In Attendance

- Gavin Barr, Executive Director of Development and Infrastructure.
- Gillian Morrison, Executive Director of Corporate Services.
- Hayley Green, Head of IT and Facilities.
- Colin Kemp, Corporate Finance Senior Manager.
- Jill Macadam, Solicitor.

Observing

- Gareth Waterson, Head of Finance.
- Graeme Christie, Estates Manager.
- Elizabeth Dennison, Asset Manager Surveyor.
- Kirsty Groundwater, Press Officer.

Declarations of Interest

- No declarations of interest were intimated.

Chair

- Councillor W Leslie Manson.

1. Disclosure of Exempt Information

The Sub-committee noted the proposal that the public be excluded from the meeting for consideration of Item 2, as the business to be discussed involved the potential disclosure of exempt information of the classes described in the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

2. Potential Strategic Land Acquisition

On the motion of Councillor W Leslie Manson, seconded by Councillor James W Stockan, the Sub-committee resolved that the public be excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraphs 6, 8 and 9 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

After consideration of a joint report by the Chief Executive and the Executive Director of Development and Infrastructure, copies of which had been circulated, the Sub-committee:

Resolved, in terms of delegated powers, what action should be taken with regard to a potential strategic land acquisition.

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.

3. Conclusion of Meeting

At 10:45 the Chair declared the meeting concluded.

Signed: L Manson.

Minute

St Magnus Cathedral Sub-committee

Wednesday, 3 April 2019, 14:15.

Council Chamber, Council Offices, School Place, Kirkwall.



Present

Councillors Robin W Crichton, Alexander G Cowie, Barbara Foulkes, J Harvey Johnston, W Leslie Manson and John T Richards.

Clerk

- Sandra Craigie, Committees Officer.

In Attendance

- Peter Diamond, Head of Education (Leisure, Culture and Inclusion).
- Keith Foubister, Works and Inspections Manager.
- Clare Gee, Cultural Services Manager.
- Paul Kemp, Strategic Finance Manager.
- Ian Rushbrook, Capital Programme Manager.
- Peter Trodden, Solicitor.
- Jude Callister, Visitor Services Team Leader.
- Meredith Macbeth, Cathedral Mason.

Apology

- Councillor John A R Scott.

Declarations of Interest

- No declarations of interest were intimated.

Chair

- Councillor Robin W Crichton.

1. Disclosure of Exempt Information

The Sub-committee noted the proposal that the public be excluded from the meeting for consideration of Item 4, 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.

2. Policy on Lighting Up St Magnus Cathedral for Special Events and Charitable Campaigns

After consideration of a report by the Executive Director of Education, Leisure and Housing, together with an Equality Impact Assessment, copies of which had been circulated, and after hearing a report from the Cultural Services Manager, the Sub-committee:

Noted:

2.1. That, in November 2016, introduction of a policy for lighting up the outside of St Magnus Cathedral was deferred, to enable wider consultation to be undertaken with groups associated with the Church Session of St Magnus Cathedral.

2.2. That consultation with groups associated with the Church Session of St Magnus Cathedral had now been concluded.

2.3. That the consultation did not recommend any amendment to the proposed policy previously submitted to the Committee in November 2016.

The Sub-committee resolved to **recommend to the Council:**

2.4. That powers be delegated to the Executive Director of Education, Leisure and Housing, in consultation with the Chair and Vice Chair of the Sub-committee, to determine requests from organisations wishing to light up St Magnus Cathedral, where the following conditions were met:

- Lighting up was part of a national charitable campaign, where the charity or its aims were relevant to Orkney.
- Lighting up was for a local charity as part of a wider local awareness raising or specific local targeted campaign.
- No political element to the activity.
- No commercial element to the activity.
- Lighting up was for a maximum of 24 hours.
- The charitable organisation provided and installed the coloured gels required, in liaison with the Traditional Stonemason or the Visitor Services Officer.
- No cost implication to the Council.
- No inappropriate clash with another activity, event or service taking place in St Magnus Cathedral.
- No physical impact or damage to the building.

3. Pilgrim Table

After consideration of a report by the Executive Director of Education, Leisure and Housing, together with an Equality Impact Assessment, copies of which had been circulated, and after hearing a report from the Cultural Services Manager, the Sub-committee:

Noted:

3.1. That a request had been received from Orkney Pilgrimage, a registered charity, for installation of a Pilgrim Table in St Magnus Cathedral.

3.2. That advice had been sought in relation to health and safety issues, potential insurance implications and potential negative impacts on the fabric of the building, and no significant issues or concerns had been identified.

3.3. That the congregation of St Magnus Cathedral, through the Minister of the Cathedral and church elders, had been consulted on the proposal from Orkney Pilgrimage, with the response being positive.

3.4. The proposed location and illustration of how the Pilgrim Table may be laid out, attached as Appendix 1 to the report by the Executive Director of Education, Leisure and Housing.

The Sub-committee resolved to **recommend to the Council:**

3.5. That installation of a Pilgrim Table in St Magnus Cathedral be approved, subject to the following conditions being met:

- No financial responsibility for the Council in the purchase or maintenance of the Pilgrim Table.
- The Pilgrim Table being owned, maintained, cleaned and kept stocked by Orkney Pilgrimage.
- Additional workload on Council staff being kept to a maximum of 5 to 10 minutes per day.
- Volunteers from Orkney Pilgrimage being available, with suitable notice, to dismantle and re-erect the table, as and when required, when required for operational requirements within the Cathedral and specific events.
- Approval not constituting a precedent for approval for other similar requests.

4. West Door

On the motion of Councillor Robin W Crichton, seconded by Councillor W Leslie Manson, the Sub-committee resolved that the public be excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 6 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

After consideration of a joint report by the Executive Director of Education, Leisure and Housing and the Executive Director of Development and Infrastructure, copies of which had been circulated, and after hearing a report from the Capital Programme Manager, the Sub-committee:

Resolved to **recommend to the Council** what action should be taken with regard to the West Door.

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.

5. Conclusion of Meeting

At 14:50 the Chair declared the meeting concluded.

Signed: Rob Crichton.