

# The 2020/21 audit of Orkney and Shetland Valuation Joint Board

Report on governance and decision-making

ACCOUNTS COMMISSION 

Prepared by the Controller of Audit  
March 2022

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# Executive summary

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## Background

1. The Orkney and Shetland Valuation Joint Board ('the VJB') is an independent body, established by the Valuation Joint Boards (Scotland) Order 1995. Its primary purpose is to discharge all the functions of its two constituent councils, Orkney Islands Council and Shetland Islands Council, as required by legislation relating to the Valuation Roll and the Council Tax Valuation List.
2. The VJB is governed by a Board, comprising up to ten councillors from each of the constituent councils (five from each). It has 15 full-time equivalent posts and, in 2020/21, a budget of £809,000. The VJB is funded by the two constituent councils.
3. I have received the annual audit report and financial statements for the VJB for 2020/21. The auditor has issued an unqualified opinion on the financial statements but has identified significant issues in relation to governance and decision-making at the VJB, some aspects of which have been reported in previous annual audit reports.
4. In his report, the appointed auditor highlights concerns about the way in which the VJB managed the contracts and pay awards for the Assessor – the most senior member of staff at the VJB – and the Depute Assessor, who was employed on a consultancy basis. While some of the issues described in the annual audit report took place after the end of the financial year, the nature of the issues brought them within the scope of the annual audit.
5. I submit this report under section 102(1) of the Local Government (Scotland) Act 1973 as a matter that the Controller of Audit considers should be brought to the attention of the Accounts Commission for Scotland.

## Annual audit report 2020/21

6. The VJB has generally done well in delivering to budget and in meeting its performance targets. However, the appointed auditor's annual audit report highlighted concerns in relation to financial sustainability, governance, leadership, procurement, and aspects of Best Value.
7. Some of these concerns had been the subject of commentary in previous annual audit reports but there were two specific issues highlighted in the 2020/21 annual audit report that were of particular concern to the auditor.

## Key issues

8. The first issue related to the Assessor's contract. Where VJB business is to be transacted – decisions taken and/or actions agreed – a meeting must be convened under sections 50A to 50D of the Local Government (Scotland) Act 1973. A decision to extend the Assessor's contract was taken at a meeting of

the Board of the VJB which had not been properly convened. This rendered the decision and meeting unlawful. While the decision was ratified at a subsequent, formal meeting of the Board, there was no reference to the unlawful meeting nor to the fact that the contract had already been extended by the time the decision was taken. There appears to have been a reasonable basis for holding the discussions on extending the Assessor's contract, but no clear justification for not holding a formal meeting of the Board to do so. As a consequence of the unlawful nature of the Board meeting at which the initial decision was taken, subsequent actions relating to the offer of a contract extension on improved terms to the Assessor and the processing of changes to his pay were themselves unlawful.

**9.** Secondly, the Depute Assessor's hourly pay rate was increased without being subject to appropriate scrutiny, including an assessment of value for money. The Depute Assessor was not a direct employee of the VJB. He was engaged as a consultant and paid an hourly rate. Between December 2015 and April 2021, the hourly rate paid to the consultant increased five times (January 2017; January 2019; November 2019; September 2020; April 2021), by 400 per cent in total.

**10.** These issues resulted from failures in governance and poor decision-making but can also be linked to weaknesses in medium-term financial and workforce planning. The remainder of this report provides further detail on these issues and on progress made by the VJB since the end of the financial year to address the issues identified by the appointed auditor in their 2020/21 annual audit report.

# Key issues in 2020/21

## The Assessor's contract arrangements

**11.** The VJB appointed the Assessor in 2015. In February 2020, the Assessor submitted his resignation to the Board, citing concerns regarding the ongoing Depute Assessor vacancy and the salary levels for both the Depute Assessor and Assessor roles. The Assessor offered to withdraw his resignation – with conditions – on 12 March 2020, subject to the Board approving an immediate increase to the Assessor and Depute Assessor salaries. On 29 April 2020, the Board rejected this but also decided not to begin a recruitment exercise or consider alternative options for the position. The Board requested that the Assessor ‘extend’ his notice period, “on a rolling monthly basis, until such time as the review of salary, terms and conditions has been completed and presented to the Board.” This was accepted by the Assessor.

**12.** The Board commissioned an independent pay and grading review, applicable to the whole organisation, which was undertaken in 2020. The Board considered the results of the pay and grading review in May 2021, and subsequently implemented changes, which it determined should apply from April 2021. The changes resulted in an increase in the Assessor's salary, from £75,839 to £79,200. The pay and grading review also proposed a reduction in working hours for all staff of the VJB (from 37 hours per week to 35 hours per week), including the Assessor.

**13.** In April 2021, the Assessor notified the Board of his intention to retire in October 2021. The Board awaited the results from the pay and grading review to inform the recruitment process for the Assessor's position. In June 2021, the Board advertised the Assessor's post, on the new terms determined by the pay and grading review. One applicant proceeded to interview, but the Board determined that the applicant did not meet the necessary requirements for the role. The recruitment period ended on 6 August, with no successful appointment.

**14.** On 20 August 2021, the Clerk issued an invite to Board members to attend a meeting on 6 September, to discuss recruitment options to replace the Assessor. This meeting was not publicly announced, and no agenda was published setting out the business to be considered or that the matters were exempt from being considered in public by virtue of their confidential nature, contrary to sections 50A to 50D of the Local Government (Scotland) Act 1973. There were no minutes of the meeting, again contrary to those provisions, and so no formal record of attendance, though Board members did attend. While there is no impediment to holding any meeting of the Board, a decision was taken by those present to offer the Assessor a new contract. The fact that the meeting was not properly convened rendered that decision unlawful.

**15.** Management was of the view that the 6 September meeting was necessary due to the urgency of the situation facing the Board. In May 2021, the Depute Assessor also intimated his intention to resign in October 2021<sup>1</sup>. Therefore, the VJB faced having no Assessor and no Depute Assessor in place. But, even if the meeting was urgent, there does not appear to be any reason why a meeting could not have been properly convened.

**16.** Following the meeting, a verbal contract offer was extended to the Assessor, by the Clerk, on behalf of the VJB. The contract offer included a further increase in the Assessor's salary, to the top of the salary scale which, at £91,527, was significantly beyond the figure determined by the pay and grading review only three months' earlier<sup>2</sup>. While an explanation was subsequently set out – see paragraphs 17 and 18, below - the justification for such an increase in value-for-money terms was unclear at this point. It is also unclear whether any consideration was given to the potential increase in pension costs arising from the salary increase. The Assessor accepted the offer on 9 September 2021 and changes to the Assessor's pay were processed on 21 September.

**17.** A meeting of the Board was subsequently convened, in accordance with the relevant statutory requirements, on 30 September 2021. A paper tabled at that meeting set out proposals for a further recruitment exercise. The paper acknowledged the previously unsuccessful recruitment exercise, noting that there had been an extremely limited response to the advert and that the calibre of applicant attracted did not meet the level of management and technical experience required. The paper also notes that informal discussions with members of the Scottish Assessors Association had not resulted in any offers of assistance, and that the competitive nature of the market would make it difficult to attract the required calibre of candidate with the salary previously offered.

**18.** The paper proposed an increase in working hours (back to 37 hours per week) and for the salary to be offered at the top of the scale, along with the offer of a 'golden hello' payment of £5,000<sup>3</sup>. Except for the 'golden hello' payment, these terms were the same as those offered to the Assessor in September 2021. The paper also notes that, because the VJB was now facing a significant problem – if no Assessor was in post, the VJB would be unable to fulfil its functions – it proposed offering the same terms to the current Assessor, to have him stay until the end of March 2022.

**19.** So, while the 30 September meeting attempted to ratify the actions taken following the 6 September meeting, it made no reference to the earlier meeting or the fact that the recommendations had already been implemented. The meeting therefore did not properly ratify the actions that the Clerk had already taken on the basis of the earlier meeting.

**20.** A revised contract, confirming the verbal offer described at paragraph 15, and dated 5 October, was issued to the Assessor on 1 November. The contract

<sup>1</sup> The Depute Assessor post was subsequently advertised and a successful candidate took up post in November 2021.

<sup>2</sup> All staff of the VJB receive an annual allowance - the Distant Islands Allowance - worth £2,265. The allowance has been in place since before the pay and grading review.

<sup>3</sup> The 'golden hello' payment would require a commitment to remain in post for three years.

was issued by the Clerk, under the names of the Chief Executives of the two councils. The Board did not delegate authority to the Chief Executives to perform this function and, in any event, did not have in place any scheme of delegation that would allow it to do so. Further, while the Chief Executive of Orkney Islands Council has confirmed he authorised the use of his name on the contract, the Clerk issued the contract without obtaining approval from the Chief Executive of Shetland Islands Council. The Chief Executive of Shetland Islands Council did not attend the meeting on 30 September. The contract issued by the Clerk was also a permanent contract, rather than a fixed-term contract to 31 March 2022, which is what the Board agreed on 30 September.

**21.** It is worth noting that, while elected members of both councils serve as members of the Board, the Board is a separately constituted body and neither council has any direct role in the management of, or decision-making at, the VJB. Neither Chief Executive has any direct role in managing the VJB's activities. Regardless of whether the Chief Executives had provided approval for the contract to be issued on behalf of the VJB, they had no authority to do so. This meant that the revised contract had no legal authority. However, notwithstanding the lack of legal authority of the contract, under employment law the Assessor could reasonably have expected to rely on it.

**22.** A timeline of the events described above is set out in Exhibit 1.

## Exhibit 1

### Assessor's contract – timeline of events



April 2021	May 2021	May 2021	June 2021	July 2021
Assessor notifies the Board of his intention to retire in October 2021.	Clerk to the Board notifies the Board of Depute Assessor's intention to resign in October 2021.	Results of pay and grading review considered by the Board.	Assessor's post advertised.	Terms and conditions of all staff, including Assessor, updated (applicable from April 2021) following pay and grading review.
6 August 2021	20 August 2021	3 September 2021	6 September	6 September
Recruitment period ends, with no successful appointment.	Clerk makes arrangement for a meeting of the Board.	<u>Depute</u> Assessor submits formal notice (one month notice period).	Board meeting – not properly convened – at which decision taken to offer the Assessor a contract extension, on improved terms.	Clerk issues verbal offer of contract extension to the Assessor.
9 September	21 September	30 September	6 October	1 November
Assessor informs Clerk that he accepts the offer.	Changes to Assessor's pay processed.	Properly convened meeting, at which the Board approves the making of an offer to the Assessor.	Date that the Assessor's previous contract was due to expire.	Formal contract letter issued to the Assessor (dated 5 October).



Source: Annual Audit Report

**23.** The processes followed, and decisions taken, by the VJB in relation to the Assessor's contract were seriously flawed. The decision taken at a meeting of the Board that was not properly convened limited the transparency of decision-



making on a matter of public spending. The subsequent errors in relation to the contract offered and issued to the Assessor were ultra-vires and unlawful, as were the additional salary payments made following the payroll changes made on 21 September 2021. In addition, the lack of information on how the Board had determined the extent of the increase in salary at the point that the verbal contract offer was made to the Assessor makes it unclear whether the Board considered, or the contract offered, value for money.

### **Depute Assessor – increases in hourly rate**

**24.** The VJB found it difficult to fill the Depute Assessor position following the appointment of the previous Depute Assessor into the Assessor role in 2015. This led to the service being provided by an external consultant who was appointed by the Assessor in December 2015. This appointment was made by agreement between the Assessor and the consultant, with a written contract in place. The contract was due to expire in September 2016 but was repeatedly extended – verbally, in contravention of the requirements of the contract and good practice – to now expire in March 2022.

**25.** Between December 2015 and 2020/21, the VJB had attempted to fill the post on a permanent basis. For example, the VJB applied a permanent uplift to the previously advertised salary and the position was advertised in 2019/20, with a candidate applying and receiving an offer. This offer was subsequently rejected by the candidate and services continued to be provided on a consultancy basis. The 2019/20 annual audit report noted that the consultant position costs equated to 80% of the equivalent full-time Depute Assessor position, but also noted the extent of services provided were not directly comparable.

**26.** The consultant was paid an hourly rate and increases made to his hourly rate were not subject to appropriate scrutiny, including an assessment of value for money. The hourly rate rose by 400% over a period of five years and four months. The total amount paid to the consultant Depute Assessor also increased significantly, though not by 400%. The amount of time spent by the consultant providing services to the VJB decreased over the length of the contract. However, the increase in the hourly rate still led to the annual cost increasing from £32,727 in 2016/17 to £49,956 in 2020/21.

**27.** The VJB did not have its own contract standing orders. In practice, it sought to follow those of Shetland Islands Council, though they had not formally been adopted by the VJB. The auditor concluded that, in making changes to the hourly rate paid to the consultant Depute Assessor, the VJB repeatedly breached the requirements of the Council's Contract Standing Orders and the Procurement (Scotland) Regulations 2016. Despite the hourly rate being increased on five separate occasions, at no point was a tender issued, no quotations were received, no competition was assessed, and no benchmarking was performed.

**28.** The only written record of any request or approval to increase the hourly rate paid to the consultant Depute Assessor was the change made in April 2021. That increase (a 100% increase on the then-hourly rate) was initially suggested by the Assessor to the Board in March 2020. The Assessor notified the Treasurer and the Clerk of the increase to the consultant Depute Assessor's



hourly rate in April 2021. Neither the Treasurer nor the Clerk challenged whether it complied with regulations or demonstrated value for money, and these decisions were not subject to any scrutiny by the Board.

**29.** The VJB's attempts, over the period from 2015 to 2021, to recruit a Depute Assessor on a permanent basis were unsuccessful. This led to the regular extension of the consultant's contract. While there were obviously challenges in recruiting to the permanent post, the regular – and ultimately significant – increases in the hourly rate paid to the consultant were in contravention of applicable regulations. It is difficult to determine whether the increases represented value for money. In addition, these decisions about important staffing matters within the VJB were not subject to any oversight and scrutiny by the Board, raising concerns about openness and transparency.

### **Lack of medium-term plans**

**30.** The VJB has not undertaken effective medium-term planning. The VJB achieved financial balance in 2020/21 and is projecting financial balance in 2021/22. This balance will be achieved through contributions from the two councils. However, the appointed auditor has highlighted the lack of a medium-term financial plan in the 2020/21 annual audit report and has flagged this issue consistently in previous annual audit reports.

**31.** The appointed auditor has also highlighted the lack of a workforce plan in the 2020/21 report, and in previous reports. In 2019/20, the auditor noted that resignations and difficulties in recruitment meant the VJB was faced with vacancies in three of its four most senior positions (Depute Assessor, Clerk and Treasurer) with the fourth position (Assessor) continuing on a rolling, monthly basis. The Clerk and the Treasurer subsequently resigned in April 2020. These positions remained vacant for half of 2020/21, although the Board did appoint officers from Orkney Islands Council to fill these vacancies in November 2020.

### **Systems and services**

**32.** The VJB has relied on – and continues to rely on – the two constituent councils for both staff and systems, including financial, human resources and IT systems. Both staff and systems have been provided on an alternating basis by the two councils. Until 2019/20, the services were provided exclusively by Shetland Islands Council. Services began to move over to Orkney Islands Council from 2020/21.

**33.** While not a contributory factor to the issues described above, the appointed auditor also identified a lack of understanding, on the part of the VJB, about services provided by Orkney Islands Council. Although the VJB believed that Orkney Islands Council was responsible for providing legal advice to it, this was not the case in practice. Moving forward, it will be important that the VJB clarifies what support it can expect to receive from the two constituent councils in supporting it to exercise its statutory functions.

### **Staffing**

**34.** When council staff work at the VJB, their work as employees of the VJB lies outside the direct management responsibilities of their employing council. I am aware that the scope for support to members of staff from their 'home' council

was constrained during the audit, due to limitations on what information could be shared with the constituent authorities. This created challenges for the staff involved.

**35.** It would be helpful for the VJB and the constituent councils to consider how best to provide appropriate advice and support to individual members of staff during their period of employment away from their 'home' council.

### Internal audit

**36.** The VJB relied on the work carried out by Shetland Island Council's internal audit function, as the VJB continued to use the council's systems throughout 2020/21. In the annual audit report, the auditor notes that there have been no VJB-specific internal audits carried out in over a decade. Given the issues identified during the annual audits, and the changes in service provision from Shetland Islands Council to Orkney Islands Council, the auditor has stated that it is no longer appropriate for the VJB to rely solely on the Shetland Islands Council's internal audit programme to provide assurance to the VJB. I agree with the auditor on this point.

### Progress since the financial year end

**37.** The VJB accepted the findings and recommendations in the annual audit report in full and has shown a commitment to addressing the gaps in decision-making relating to both the Assessor and Depute Assessor positions. There have also been several other recent developments, in response to the auditor's findings and recommendations in this and previous years.

**38.** The VJB has developed a workforce plan, the first draft of which was submitted to the Board on 30 September 2021. The plan and progress with implementation will be reviewed by the appointed auditor as part of the 2021/22 audit. A high-level review of the plan presented on 30 September indicates that the VJB would consider both immediate needs and future needs. The plan also recognises the challenges in recruitment to technical posts, including senior posts. It recognises the need to consider alternative measures to attract the right staff, as well as a need to develop the existing workforce.

**39.** The VJB intends to develop a medium-term financial plan later in 2021/22, following the completion of a review of the new pay and grading model.

**40.** A formal offer of appointment was made in October 2021 and a new, permanent Depute Assessor took up post in November 2021.

**41.** The issue of there being no access to legal advice was rectified at the Board's meeting on 18 November 2021, when the Board authorised the Clerk to obtain legal advice when required.

**42.** The Assessor is due to retire at the end of March 2022. A new Assessor has been appointed and will take up post on 16 May 2022. At the time of writing this report, the VJB was considering options to cover the period between these two events.

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# Conclusion

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## Conclusion

**43.** The VJB faced challenges in terms of recruitment for both the Assessor and the Depute Assessor positions. While the basis for some of the decisions it took may have been justified, there were serious flaws in both the processes followed and the actions taken. The VJB took numerous decisions that were unlawful or were not supported by appropriate or specified procedures, and which did not accord with good practice.

**44.** The issues in this report highlight significant concerns in relation to governance and transparency. The report also highlights weaknesses in the VJB's approach to planning.

**45.** While the VJB has since taken steps to address the gaps in decisions made in relation to the Assessor's contract, and has appointed a permanent Depute Assessor, the VJB's actions have led to increased costs, additional work for staff and Board members, risks in relation to value for money and potential reputational damage to the Board.

**46.** It is critical that the Board learns the lessons from this experience and promotes strong governance around decision-making, as well as exercising care when considering what business it considers at anything other than a properly convened meeting. The VJB sought to follow the procedures of the two councils, but it did not formally develop or adopt processes and procedures of its own, including a scheme of delegation and contract standing orders. While I am of the view that this was not a significant factor in the matters covered by this report, the VJB should draw on the lessons from these events to put in place, or strengthen, its own procedures.

**47.** It is encouraging that the VJB has now prepared a workforce plan and has been working on a medium-term financial plan. It now needs to finalise and implement these plans, and it will be important that they are subject to regular review.

**48.** The appointed auditor will continue to monitor developments and will report on progress in the 2021/22 annual audit report.

# The 2020/21 audit of Orkney and Shetland Valuation Joint Board

## Report on governance and decision-making

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