



West Lothian  
Council

## ***Partnership and Resources Policy Development and Scrutiny Panel***

West Lothian Civic Centre  
Howden South Road  
LIVINGSTON  
EH54 6FF

25 July 2014

A meeting of the **Partnership and Resources Policy Development and Scrutiny Panel** of West Lothian Council will be held within the **Council Chambers, West Lothian Civic Centre, Livingston** on **Friday 1 August 2014** at **8:30am**.

For Chief Executive

### **BUSINESS**

#### **Public Session**

1. Apologies for Absence
2. Order of Business, including notice of urgent business
3. Declarations of Interest - Members should declare any financial and non-financial interests they have in the items of business for consideration at the meeting, identifying the relevant agenda item and the nature of their interest.
4. Confirm Draft Minute of Meeting of Partnership and Resources Policy Development and Scrutiny Panel held on Friday 06 June 2014 (herewith)
5. Presentation on Treasury Management by Head of Finance and Estates
6. Councillors' Code of Conduct - Annual Review 2013/14 - Report by Chief Legal Officer (herewith)
7. West Lothian Development Trust Review - Progress Report - Report by Head of Area Services (herewith)

DATA LABEL: Public

8. Response to Consultation on Proposals to Reform Fatal Accident Inquiry Legislation - Report by Head of Corporate Services (herewith)
9. Payments to Voluntary Organisations - Report by Head of Area Services (herewith)
10. Workplan (herewith)

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NOTE      **For further information contact Anne Higgins, Tel: 01506 281601 or email: [anne.higgins@westlothian.gov.uk](mailto:anne.higgins@westlothian.gov.uk)**

MINUTE of MEETING of the PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL of WEST LOTHIAN COUNCIL held within CONFERENCE ROOM 3, WEST LOTHIAN CIVIC CENTRE, on 6 JUNE 2014.

Present – Councillors John McGinty (Chair), Dave King (substitute for Cathy Muldoon), Peter Johnston, Angela Moohan, George Paul

Apologies – Councillor Cathy Muldoon, Martyn Day

1. DECLARATIONS OF INTEREST

There were no declarations of interest made.

2. MINUTE

The Partnership and Resources Policy Development and Scrutiny Panel approved the minute of its meeting held on 25 April 2014. The minute was then signed by the Chair.

3. PROPOSED REVIEW OF THE SCHEME FOR ESTABLISHMENT OF COMMUNITY COUNCILS IN WEST LOTHIAN

A report had been circulated by the Head of Corporate Services advising the Panel of the outcome of the first round of statutory consultation on the council's proposal to adopt an amended Scheme for Establishment of Community Councils in West Lothian and to outline the next steps.

The report recalled that, in March 2014, the Panel had been informed of the intention to revoke the existing Scheme for Establishment of Community Council and to produce a new one. The timetable for the review process was provided in Appendix 1 to the report.

The Panel noted that the consultation exercise had run from 17<sup>th</sup> March to 15<sup>th</sup> May 2014 to give all interest parties the opportunity to submit their comments on the existing scheme. The comments received during the 8 week consultation exercise were provided in Appendix 2 and these comments had been considered by the working group and where agreeable, incorporated into the first draft scheme or supporting documents.

The report went on to explain a proposed boundary change by West Lothian Council. It was proposed that the existing Whitburn and Greenrigg Community Council be separated to accommodate the request from residents in Greenrigg to once again form two separate community council. A copy of the proposed boundaries for the new community council were provided in Appendix 3.

Appendix 4 to the report was a note of the main points arising from the

working group meetings. It was noted that there had been nothing proposed or discussed which created problems from the perspective of officers, with many proposed changes being tidying-up adjustments, and others to simplify things like membership and elections.

Finally, the report set out the next steps for further consultation and adoption of a new Scheme. The following documents were also attached to the report.

Appendix 5 – 1<sup>st</sup> Draft Scheme

Appendix 6 – Draft Constitution and Standing Orders

Appendix 7 – Draft Code of Conduct for Community Councillors

It was recommended that the Panel:-

1. note the outcome of the first round of consultation.
2. note the terms of the 1<sup>st</sup> draft model scheme.
3. note the proposed boundary changes.
4. note the next round of consultation to be undertaken.

#### Decision

To note the terms of the report.

#### 4. COUNCIL'S CODE OF CORPORATE GOVERNANCE - ANNUAL REVIEW OF COMPLIANCE 2013/14

A report had been circulated by the Chief Legal Officer informing the Panel of the outcome of the annual review of the council's compliance with its Code of Corporate Governance.

The Chief Legal Officer advised that, during the latter part of 2013/14, Internal Audit had conducted a review of services' compliance with the council's Partnership Working Guidance. Implementation of any improvement identified in the report would form part of the work of the Corporate Governance Working Group in 2014/15. In relation to arrangements for reporting on the activities of significant outside bodies, and/or those with elected member representation, the review had found that there were still improvements required to the reporting arrangements and reminders had been issued to Heads of Service which had resulted in all relevant report requirements being met.

It was noted that each item in the revised Code required to be assessed across three factors – approach, deployment and review. Governance Champions for each Head of Service had assessed each requirement of the Code in turn and used a scoring scale (from 0 to 4) for each of the three categories. The scores obtained were shown in Appendix 1 to the report. A comparison of the scoring for 2012/13 and 2013/14 was examined within the report.

The council's Code of Corporate Governance required an annual statement of compliance to be made by the relevant responsible officer on a number of issues. The annual statements, with the exception of 'Freedom of Information' and 'Councillors' Code of Conduct' were contained in Appendix 2 to the report.

A number of specific issues of a governance nature addressed during 2013/14 were examined in the report. These were:-

- 1) Risk Management and Business Continuity Planning
- 2) Review of Corporate Delegation Template
- 3) Protocol for Complains regarding Conduct of Councillors
- 4) Training on Corporate Governance Matters
- 5) Identification of Potential Governance Issues

Finally, the Chief Legal Officer reported that the following activities would be pursued by the Corporate Governance Working Group in 2014/15 to further improve governance requirements across the council:-

A review with the Governance Champions to ensure the consistent application of evidence across service areas. This will ensure that any areas for improvement within service areas are highlighted for future action.

A review of the scores for 2013/14 to identify appropriate standards where evidence of compliance can be improved further.

An investigation of the possibility of streamlining the scoring system to facilitate a consistent approach to assessing the evidence of compliance across services.

Implementation of any improvements identified in Internal Audit's report on compliance with the council's Partnership Working Guidance.

A review by Internal Audit of another section of the Code to maintain awareness of its provisions and improve compliance with them.

Benchmarking the council's approach to corporate governance with other councils.

It was recommended that the Panel:-

1. Note that the evidence of compliance with the standards of the Code had been strengthened and the standards continued to be substantially met in 2013/14.
2. Note the changes for future years to the statements on anti-fraud policy and benefit fraud, and on corporate procurement, as set out in section D11 of the report.
3. Agree that the focus in 2014/15 should be on the actions identified in section D13 of the report to further improve the levels of compliance with the Code's standards across the council.

4. Agree that the report be referred to the Audit and Governance Committee for consideration.

#### Decision

1. To note the terms of the report; and
2. To agree that the report be referred to the Council Executive and the Audit and Governance Committee for consideration.

### 5. BEST VALUE FRAMEWORK

A report had been circulated by the Chief Executive setting out proposals for a revised Best Value Framework for the council.

The Chief Executive considered that review was required to update the Best Value Framework to reflect changes to current procurement legislation and financial thresholds, two versions of best value guidance which had been issued after the approval of the current framework, and changes to the operating framework and approach to Best value, such as a corporate and comprehensive approach to performance reporting and more rigorous WLAM assessments.

The report provided the following appendices:-

- |            |   |
|------------|---|
| Appendix 1 | List of Council Services covered in the Best Value Framework.   |
| Appendix 2 | Flowchart providing information as to the relevant decision required when taking decisions in the delivery of services. |
| Appendix 3 | Flowchart concerning the application of Best Value Framework for goods and materials.                                   |
| Appendix 4 | List of Procurement definitions   |
| Appendix 5 | Works Exemptions for inclusion in Standing Orders/Corporate Procurement Procedures                                      |
| Appendix 6 | Flowchart concerning the application of Best Value Framework - Works  |

The report contained procedures for monitoring, review and reporting on the Best Value Framework. The report also advised that the proposal would be submitted to Council Executive for approval on 24 June 2014.

The Chief Executive concluded that:-

- The Council would have an up-to-date framework reflecting legislation and statutory guidance.
- Officers would have an aid to making decisions about delivering

projects in-house or externally.

- Major exemptions from the requirement to put works contracts out to tender would be put in place based on relevant factors.
- Arrangements would be in place for regular reporting on decisions taken in relation to delivery of projects in-house or externally.
- Both the Framework itself and the “exceptional circumstances exemptions” would be reviewed on a regular basis.

It was recommended that the Panel:-

1. Note the existing Best Value framework and the arrangements that were currently in place.
2. Note the updated Best Value framework as set out in the report.
3. Note the proposal to amend Standing Orders for Contracts and corporate Procurement Procedures to include a statement requiring council officers to comply with the Best Value Framework.
4. Note the proposal that the Best Value Framework was reviewed at least once in every administrative term and the outcome of the review reported to Council Executive.
5. Note the proposal to delegate to the Chief Executive between those reviews the power to make minor administrative changes to the Best Value Framework.
6. Note that appropriate monitoring procedures were put in place to ensure full compliance with the Best Value Framework.
7. Note the intention to report the Best Value Framework to Council Executive for approval on 24 June 2014.

### Decision

To note the terms of the report and to agree that the proposals be forwarded to Council Executive for approval.

## 6. REVIEW OF CORPORATE DEBT POLICY

A joint report had been circulated by the Head of Finance and Estates and the Head of Housing, Construction and Building Services providing the Panel with an update on the proposed approach to the delivery of the Corporate Debt Policy.

The Panel was informed that the review had examined current processes and procedures in relation to the way debts were collected and had identified changes that would benefit both citizens and the council. The objectives of the review were to consider options that would:-

- Improve processes and procedures for single and multiple debts.
- Create a point of contact for customers with multiple debts to the council, providing an effective point of engagement to assist in managing their debt.
- Enable the council to make contact with those with multiple debts as early as possible.
- Ensure that officers work with debtors to set realistic and sustainable repayment amounts and identify debtors who were in a more difficult situation.
- Enable the roles and responsibilities of the Corporate Debt Team within the Revenues Unit and Community Based Housing Officers to be developed. This would be done in full consultation with trade unions.
- Look to extract data from the Open Housing system in relation to rent balances to be added to the existing information held in the council Corporate Arrears Recovery System (CARS) to allow a complete picture of a citizen's debt to the council to be built up.

The Head of Finance Estates advised that a workshop had been held with key council representatives with the aim of reaching a consensus on what needed to change and to propose a model for taking forward the council's approach to corporate debt. Building on the findings from the workshop, the group concluded that a re-design should incorporate the following three principles, and these were explained in the report:-

- Joined-Up Approach
- Early Intervention/Prevention/Sustainability
- Best Use of Resources

It was proposed that an integrated corporate debt team be created to deal with all the main council debts at an appropriate stage. The model would allow clear lines of responsibility a debts to the council would be managed by a central tem that would coordinate a customer's full debt situation. The Corporate debt Delivery Model was explained fully in the report.

Appendix 1 to the report was a table analysing the main council arrears down by the debt type.

Appendix 2 outlined the various project stages and suggested timescales for implementation.

It was recommended that the Panel:

1. Note the conclusions of the review.
2. Note the proposed re-design of corporate debt based on the three



principles outlined in section D4 to the report.

3. Note the proposed corporate debt approach as outlined in section D5.
4. Note that it was proposed that a project be initiated with full governance structure.
5. Note the intention to report the proposals to the Council Executive on 24 June 2014 for approval.

#### Decision

To note the terms of the report and to agree that the report be forwarded to the Council Executive for information.

### 7. QUARTERLY WELFARE REFORM UPDATE

A report had been circulated by the Head of Finance and Estates informing the Panel of the continuing implications of the ongoing programme of welfare reforms.

The report informed the Panel of the work of the Council's Welfare Reform Development Group and provided commentary on the following elements of the welfare reform:-

Scottish Welfare Fund  
Size Criteria in the Social Rented Sector  
Discretionary Housing Payment  
Universal Credit  
Local Support Services Framework for Universal Credit claims  
New Claimant Commitment

In relation to Discretionary Housing Payment Fund, the report advised that during 2013/14 DHP expenditure by West Lothian Council was £766,394. This utilised in full the funding that had been made available from the Department for Work and Pensions (DWP) and the Scottish Government.

As the Scottish Government had stated that funding to fully mitigate the effects of the bedroom tax would be provided, and as the DHP cap would be lifted, it had been agreed that changes to the council's current DHP policy and procedures were required and a report on this issue had been presented to Council Executive on 27 May 2014.

In relation to Universal Credit, the Council had been advised that Universal Credit would not be rolled out in West Lothian during 2014/15.

In addition, all councils had been informed that the planned changes to Pension Credit, involving the phasing out of Housing Benefit and the inclusion of a housing support element in Pension Credit would not now take place from October 2014 as planned. The current system for pensioners, including Housing Benefit, would remain in place until at least

2017/18. Announcements on the revised timetable for Universal Credit and decisions on the IT development for the scheme were expected in late autumn 2014.

The Head of Finance and Estates responded to questions raised by Panel members, highlighting that information available to him concerning the IT development for Universal Credit, was being shared with staff.

The Panel was asked to note the impacts of the welfare reforms in West Lothian and the action the Council was taking in response.

#### Decision

To note the terms of the report.

### 8. REPORTING OF MINUTES FROM SCOTLAND EXCEL CHIEF OFFICERS MANAGEMENT GROUP

A report had been circulated by the Head of Finance and Estates informing Panel members of the Scotland Excel Chief Officers Management Group meeting held on 14 February 2014.

The Panel was informed that the Scotland Excel Chief Officers Management Group met on a quarterly basis and involved Chief Officers from an invited selection of Council.

The Panel was asked to note the minute of meeting held on 14<sup>th</sup> February 2014.

#### Decision

To note the report and the minute of meeting of the Scotland Excel Chief Officers Management Group.

### 9. SHARED SERVICES - WEST LOTHIAN COLLEGE

A report had been circulated by the Depute Chief Executive updating the Panel on the proposals for the development of shared service provision with West Lothian College.

The report recalled that, in March 2012, the Cabinet Secretary for Education and Lifelong Learning had announced that West Lothian would be one of thirteen regions identified for the future provision of further education. Following this announcement, West Lothian College had been asked to produce a business case for shared services and joint provision with the Council to contribute to the financial sustainability of the region.

The Depute Chief Executive advised that, following discussions with the College, it had been agreed that Human Resources, Information Technology and Marketing/Media Services offered the best opportunity for shared service provision. Proposals had been developed by officers and these were outlined in the report.

In relation to staffing issues, the Panel was asked to note that the proposed range of services would not result in any staff transfer between the College and the council. Both parties had provided regular updates to the respective recognised trade unions, and any issues arising had been addressed by the relevant party as required.

The proposed governance arrangement was for a Joint Management group, and it was envisaged that the Depute Chief Executive (Corporate, Housing and Operational Services) and the College Principal would be the principal officers nominated by each party to act as the Joint Management Group with each party having equal status, and with responsibility for certain functions. It was also proposed that the Head of Corporate Services and College's Assistant Principal would be the lead officers in the delivery of the shared services to the Joint Management Group.

Finally, the Panel was informed that the college was seeking to implement the Marketing/Media Services from 1 July 2014, with the in scope IT and HR services to follow by September/October 2014. Officers had developed a Shared Services Agreement which set out the proposed governance structure and arrangements for the shared services proposals.

The Panel was asked to note the proposals as outlined in the report.

#### Decision

To note the terms of the report.

### 10. QUARTERLY PERFORMANCE REPORT

A report had been circulated by the Depute Chief Executive examining the current levels of performance for all indicators that supported the council's Corporate Plan and were the responsibility of the Partnership and Resources Policy Development and Scrutiny Panel.

The Panel was informed that of the 35 performance indicators, 5 were categorised as amber. There were no indicators categorised as red.

For each indicator, a note was provided offering an explanation from the service on why the performance was below target.

The Depute Chief Executive considered that the information allowed the Panel to function in accordance with the Council's Code of Corporate Governance and the principles of Best Value.

The Panel was asked to note the performance information and determine if further action or enquiry was necessary for any of the indicators in the report.

#### Decision

To note the terms of the report.

11. INFORMATION MANAGEMENT POLICIES

A report had been circulated by the Head of Corporate Services informing the Panel of the outcome of the annual reviews of council policies relating to information management, together with recommended updates, amendments and subsequent review dates.

The Head of Corporate Services advised that the policies relating to information management had been reviewed by the Information Management Working Group to ensure that they continued to support the Council's compliance with statutory requirements and that they took account of modernising and developing business processes.

The Panel noted that the Data Protection Policy had been reviewed, updated and reformatted to bring it in line with other council policies. There were a number of minor updates proposed following the 2014 review and these were summarised within the report.

In relation to the Information Security Policy, there were a number of minor updates proposed following the 2014 review, and these were summarised within the report.

The Publication Scheme, Records Management Plan and Records Management Policy had all been reviewed and no updates were proposed.

It was recommended that the Panel:-

1. Note the proposed updates to the Data Protection and Information Security Policies and
2. Note the recommendation not to update the Publication Scheme and Records Management Plan and Records Management Policy in 2014.

Finally, the Head of Corporate Services informed the Panel that the report would be forwarded to Council Executive for approval.

Decision

1. To note the terms of the report; and
2. To agree that the proposals be forwarded to Council Executive for approval.

12. QUARTERLY SICKNESS ABSENCE

A report had been circulated by the Head of Corporate Services examining sickness absence rates within the council for the 13 month

period from 1 April 2013 to March 2014 and to advise on measures being taken to implement the council's Policy & Procedure on Managing Sickness Absence.

Appendix 1 to the report showed the sickness absence Standard Performance Indicator (SPI) for the period 1 April 2013 to 31 March 2014. It was noted that, while the SPI was higher than for the same period in 2012/13 and 2011/12, it was lower than in any of the other previous 5 years.

The sickness absence SPI for each service area for the period 1 April 2013 to 31 March 2014 was set out in Appendix 2 to the report.

The report provided tables showing (i) the number of employees at each stage of the Policy & Procedure as at 31 March 2014, compared to the previously reported positions, (ii) a breakdown of the cases live as at 31 March 2014, and (iii) an analysis of the movement in the 689 cases that were live as at 31 December 2013. The report also provided commentary on the Nurse Led Call Centre and on specific interventions currently in place.

The Head of Corporate Services concluded that, following the introduction of the revised Policy & Procedure on Managing Sickness Absence in May 2010 the council had reported significant reductions in sickness absence rates. During 2013/14 an increase in sickness absence had been seen, relative to 2011/12 and 2012/13.

The Head of Corporate Services then responded to questions raised by Panel members.

### Decision

To note the terms of the report.

## 13. FIRE SAFETY POLICY

A report had been circulated by the Head of Housing, Construction and Building Services providing details of the proposed council wide Fire Safety Policy and Fire Safety Risk Management Plan.

The report explained that duties under the Fire (Scotland) Act 2005 and Fire Safety (Scotland) Regulations 2006 extended to risks associated with fire in relevant premises and the Fire Safety Policy and Risk Management Plan had been developed in line with the legislation.

A copy of the Fire Safety Policy was attached as Appendix 1 to the report and the Fire Safety Risk Management Plan was attached as Appendix 2.

The Head of Housing, Construction and Building Services concluded that the new Fire Safety Policy and Fire Safety Risk Management Plan would ensure ongoing compliance with legislation. It set out key responsibilities and accountabilities consistent with other property compliance policies.

The Panel was asked to note the content of the proposed Fire Safety Policy and Fire Safety Risk Management Plan and to recommend that the report be forwarded to Council Executive for approval.

Decision

To note the content of the proposed Fire Safety Policy and Fire Safety Risk Management Plan and to agree that it be forwarded to Council Executive for approval.

14. WORKPLAN

A copy of the workplan had been circulated.

The Panel noted a request by Councillor Johnston that the following items of business be added to the Workplan:-

1. Budgetary Issues 2015/16.
2. Withdrawal from COSLA – Report examining the benefits of retaining or relinquishing COSLA membership.

Decision

1. To note that Budgetary Issues 2015/16 would be placed on the Workplan.
2. To note advice provided by the Chair that the Council had agreed to give 12 months' notice to end COSLA membership with provision to withdraw this notice at any time during 2014/15. Should the Council decide not to withdraw its notice of termination, officers would be asked to prepare a report on the implications for the Council and this report would come to the Panel at an appropriate time.



West Lothian  
Council

**PARTNERSHIP & RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL**

**COUNCILLORS' CODE OF CONDUCT - ANNUAL REVIEW 2013/14**

**REPORT BY CHIEF LEGAL OFFICER**

**A. PURPOSE OF REPORT**

To fulfil the requirement of the council's Code of Corporate Governance which requires an annual review of the operation of the Code, and to maintain awareness of the provisions of the Councillors' Code of Conduct in order to promote high standards of conduct.

**B. RECOMMENDATION**

To note the report.

**C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Being honest, open and accountable
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	In terms of the Ethical Standards in Public Life (Scotland) Act 2000 (the 2000 Act), the council is under a duty to promote observance by councillors of high standards and to assist councillors to observe the Code
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	Within existing resources
<b>VII</b>	<b>Consideration at PDSP</b>	Proposed Partnership and Resources PDSP on 1 August 2014
<b>VIII</b>	<b>Other consultations</b>	Chief Executive, Head of Corporate Services, Committee Services Manager.

## **D. TERMS OF REPORT**

### **1. Background**

Under the 2000 Act, the council has a duty to promote observance by councillors of high standards of conduct and to assist councillors to observe the Code.

The council's Code of Corporate Governance, audited by the external auditor, requires an annual training session for councillors to be held, and an annual report to the council on the operation of the Councillors' Code of Conduct.

### **2. Training**

A training session for members of the West Lothian Licensing Board was held on 5 November 2013. One of the main purposes of the session was to explain the application of the Councillors' Code of Conduct to regulatory bodies such as the Board, and how members of such bodies are required by law to act differently from when they are members of other types of body such as policy forums, eg the council's Council Executive, or when they are carrying out their representative role. In particular, the session covered the requirements of the Code in relation to declaring interests at meetings of the Licensing Board and how to manage situations where members are approached or lobbied by applicants or objectors.

The annual training session for councillors for 2013/14 was held on 26 November 2013. 14 councillors attended the session in whole or in part, and 16 officers. The format followed the previous years' style of training sessions by dealing with key areas of the Code through an analysis of recent decisions of the Standards Commission and the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner). The key areas covered were:-

- the Commissioner's annual report for 2012/13 providing an overview of the complaints and breaches of the Code found across Scotland, and the following conclusions he drew from them –
  - councillors had generally applied high standards of conduct in undertaking their official duties
  - but local authorities must continue, actively and as a priority, to promote high ethical standards as part of their arrangements for corporate governance
- the key issues arising from decisions of the Standards Commission and the Commissioner identified as –
  - time limit on submitting complaints
  - registration of interests
  - declaration of interests
  - use of council facilities
  - breach of confidentiality, and
  - the scope of the Code.



Officers will continue to be invited to attend the annual briefing session as part of the council's duties to promote the Code.

Council officers' awareness of the Code is also addressed through regular and frequent training sessions given by the Committee Services Manager through the HR Learning & Development programme on working in a political environment and with councillors. Those sessions cover the separate Codes of Conduct for elected members and council officers and the relationships involved, as well as the Multi-Member Ward Protocols.

On a very small number of occasions during the year, there arose some differences of approach to the Code's requirements as to when elected members appearing at Development Management Committee as ward members were required to leave the meeting. The same issue may arise in a smaller number of instances at the West Lothian Planning Committee and at the Licensing Committee as well. Advice will be made available to members through a wider training session in the coming year to ensure a clear and uniform approach.

In February 2014 the Scottish Government, in conjunction with the Commissioner and COSLA, issued a document called "Guidance on the Role of Councillors in Pre-Application Procedures". It applies to the involvement of elected members in the procedures required of developers before lodging certain applications for planning permission. The Code refers to elected members being permitted in certain restricted circumstances to express an opinion in advance of the statutory application for planning permission being submitted for determination. It recommends that councils should consider and develop their own pre-application procedures, and it is proposed to bring forward recommendations to PDSP and Council Executive after the summer recess. Advice will thereafter be made available to members through a wider training session in the coming year.

### **3. Register of Members' Interests including acceptance of Gifts & Hospitality**

In accordance with guidance from the Standards Commission, six monthly reminders were issued to members on 3 June and 27 November 2013 to enable them to check their entries on the council's web site and to keep their entries up to date. However, it is the duty of each councillor to intimate to the Chief Legal Officer any change in their entries in the Register of Interests, including receipt of any gifts and hospitality, within one month of any change taking place.

The six monthly reminders also asked if members wished further training in any aspect of the Code. No issues were raised.

### **4. Protocol for dealing with Complaints against Councillors**

As a result of the council's consideration of the council's Local Code of Corporate Governance for 2012/13, a formal procedure for dealing with complaints made to the Chief Executive against members has been developed.

### **5. Commissioner for Ethical Standards in Public Life in Scotland**

From 1 July 2013 the Commission for Ethical Standards in Public Life in Scotland and its two existing members — the Commissioner for Public Appointments and the Public Standards Commissioner — were restructured to establish one new office of the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner).

Complaints alleging breaches of the Code were previously investigated by the Public Standards Commissioner. They are now submitted to the newly constituted Commissioner who investigates these complaints to determine whether, in his view, there has been a breach of the Councillors' Code of Conduct.

If the Commissioner finds that there has not been a contravention of the Councillors' Code, the matter ends there and summaries of the more interesting reports are posted on his web site.

If the Commissioner concludes that there has been a breach of the Code, he reports accordingly to the Standards Commission which then decides whether to hold a hearing.

The Commissioner's investigations are required under the 2000 Act to be conducted on a confidential basis, which means that no information can be given on any current investigations by the Commissioner. The Standards Commission's hearings are conducted in public.

## 6. Operation of the Code in West Lothian

### (1) Numbers of Complaints to Commissioner in 2004/05 to 2013/14

Since the Code came into operation in May 2003, there has been a total of 40 cases of complaint made to the Commissioner against West Lothian councillors. The breakdown is:-

**Table 1:** Number of complaints to PSC in West Lothian

2004/05	4
2005/06	6
2006/07	4
2007/08	1
2008/09	7
2009/10	6
2010/11	1
2011/12	2
2012/13	6
2013/14	3
<b>Total</b>	<b>40</b>

Table 1 shows that there were three complaints made to the Commissioner in 2013/14, a decrease of one in the yearly average of four.

## **(2) Subject Matters covered by Complaints to Commissioner in 2004/05 to 2013/14**

The subject matters covered in all complaints since the start of the Code are: -

**Table 2:** Subjects covered by all complaints to Commissioner in West Lothian

Conduct in the Chamber	10
Payment of allowances	1
Key principles generally	9
Principles of leadership & accountability	2
Principle of respect regarding employee of other public body	1
Dealing with planning applications/declarations of interest	10
Use of council facilities (circular letters to constituents or personal use)	3
Declaring financial interests/withdrawal from meeting	2
Lobbying on planning applications	1
Other (matters not relevant to Code)	1
<b>Total</b>	<b>40</b>

Of these 40 cases since the start of the Code in 2003, only two have resulted in the Commissioner or his predecessor finding a breach of the Code. Those two cases were reported to the Standards Commission which decided that in the particular circumstances of both cases, it was not in the public interest to hold a hearing.

## **(3) Analysis of Complaints to Commissioner in 2013/14**

An analysis of the three cases dealt with by the Commissioner in 2013/14 is –

**Table 3:** Breakdown of Commissioner cases in West Lothian in 2013/14

<b>Subject Matter</b>	<b>No.</b>	<b>Complainer</b>	<b>PSC's Decision</b>
Dealing with planning application/declaration of interests	2	1 Member of public 1 Councillor	Awaited
Conduct at meeting	1	Councillors	Not upheld

Tables 2 and 3 above show that dealing with planning applications/declarations of interest and conduct at meetings continue to be the most common grounds of complaint and will remain key areas for councillors exercising care in such circumstances to ensure compliance with the Code.

#### **(4) Number of Complaints to the Council from 2011/12 to 2013/14**

Prior to 2011/12, complaints made to the council about the conduct of councillors were rare. Any such complaints are made to the Chief Executive who appoints an officer to investigate, usually the Monitoring Officer or his Deputy. Since 2011, 14 complaints have been received by the council. A breakdown is as follows –

**Table 4:** Number of complaints to council

2011/12	4
2012/13	6
2013/14	4
<b>Total</b>	<b>14</b>

In 2013/14, four such complaints were received, a decrease of two over the previous year. An analysis of these four cases is -

**Table 5:** Breakdown of complaints to council in 2013/14

<b>Subject Matter</b>	<b>No.</b>	<b>Complainer</b>	<b>Decision</b>
Key principle of respect	1	Member of public	Not upheld
Use of council facilities	1	Member of public	Not upheld
Use of council facilities	1	Councillor	Not upheld
Conduct at meetings	1	Member of public	Not upheld

In none of these cases was a breach of the Code found. One of the complaints was a repeat of a complaint not upheld in 2011/12.

## **7. Key Issues arising from Complaints in 2013/14**

A number of issues have been highlighted in the cases dealt with in 2013/14. The key ones where particular care needs to continue to be exercised to avoid breaching the Code are -

- Identifying the need to declare both financial and non-financial interests at council meetings, not just when considering planning applications, and, more importantly, in determining the need to withdraw from the meeting. Early advice from officers should be sought before such meetings;
- When discussing issues at council meetings, robust political debate is acceptable but must not become personally abusive, offensive or intimidating;
- Ensuring that council facilities of any kind are not used for party political or campaigning purposes, and only for incidental personal use in accordance with council policy; and
- Avoiding disrespectful or aggressive behaviour when dealing with members of the public.

## **8. Annual Reports of Standards Commission and Commissioner for 2013/14**

The annual reports of the Standards Commission and the Commissioner for 2012/13 are the latest ones available. Statistical information from these annual reports was presented to members at the training session on 26 November 2013. It included information on the national trends in numbers and grounds of complaint.

The annual reports of the Standards Commission and Commissioner for 2013/14 are expected later this year and information from them will be presented to members once they have been received.

## **9. Consideration by Partnership and Resources PDSP -**

The Partnership and Resources Policy Development and Scrutiny Panel is due to consider this report at their meeting on 1 August 2014 prior to submission to the Council Executive.

## **E. CONCLUSION**

Regular training on aspects of the Code of Conduct has been provided to councillors during 2013/14, and this will continue in 2014/15.

The council has experienced 40 complaints submitted to the Commissioner since the start of the Code of Conduct in 2003, averaging four each year. Over that period, only two cases have resulted in a finding of a breach of the Code by the Commissioner. In 2013/14, three complaints were submitted to the Commissioner, one less than the yearly average of four. Four complaints were received by the council in 2013/14, a decrease of two over the previous year. None of those four complaints found a breach of the Code.

The council continues to demonstrate that high standards of conduct are being maintained. To assist in maintaining such standards of conduct in future, more

briefing sessions for members will be arranged where necessary in order to continue to promote observance of the Code and assist members to observe the Code.

More advice on how to comply with the Code is available from the Chief Executive, Chief Legal Officer/Monitoring Officer, Head of Corporate Services, and the Committee Services Manager.

## **F. BACKGROUND REFERENCES**

Councillors' Code of Conduct containing the Standards Commission's guidance on the Code, available at

[http://www.standardscommissionscotland.org.uk/webfm\\_send/279](http://www.standardscommissionscotland.org.uk/webfm_send/279)

Presentations to councillors by Chief Legal Officer/Monitoring Officer on 5 and 26 November 2013

Presentations to councillors and officers by Committee Services Manager

Guidance on the Role of Councillors in Pre-Application Procedures issued by Scottish Government and Convention of Scottish Local Authorities

dated February 2014, available at -

<http://www.scotland.gov.uk/Resource/0044/00444959.pdf>

Annual report for 2012/13 by the Standards Commission for Scotland, available at [http://www.standardscommissionscotland.org.uk/webfm\\_send/327](http://www.standardscommissionscotland.org.uk/webfm_send/327)

Annual report for 2012/13 by the Commissioner for Ethical Standards in Public Life in Scotland, available at – <http://www.ethicalstandards.org.uk/site/uploads/publications/fa16805ce89802135fe9847cf7bfd1f6.pdf>

Reports and decisions of the Commissioner for Ethical Standards in Public Life in Scotland available at

<http://www.publicstandardscommissioner.org.uk/decisions/>

Minute of meeting of the Council Executive of 4 June 2013

Appendices/Attachments: None

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**Gordon Blair**

**Chief Legal Officer/Monitoring Officer**

Date of meeting: 25 June 2014



**PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL**

**WEST LOTHIAN DEVELOPMENT TRUST REVIEW – PROGRESS REPORT**

**REPORT BY HEAD OF AREA SERVICES**

**A. PURPOSE OF REPORT**

The purpose of this report is to update the panel on the progress made to date on implementation of the recommendations of the review of West Lothian Development Trust (WLDT).

**B. RECOMMENDATION**

It is recommended that the Panel notes the actions taken to implement the review recommendations, in particular those which have improved the transparency of the trust and the changes that have been made to trustees' terms of office.

**C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Developing our economy and working in partnership.
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	None.
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None.
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None.
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	Support for regeneration initiatives reinforces a number of aims of the Single Outcome Agreement, specifically those aimed at tackling inequalities in West Lothian.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	The cost of the review (£10,000) was met by West Lothian Council.
<b>VII</b>	<b>Consideration at PDSP</b>	WLDT Review - Partnership and Resources PDSP 27 September 2013.
<b>VII</b>	<b>Other consultations</b>	West Lothian Council, Scottish Power, Association of Community Councils, West Calder, Blackburn, Fauldhouse and Polbeth communities were consulted on the review.

## **D. TERMS OF REPORT**

### **D1 Background**

In June 2006, West Lothian Council agreed a framework for engaging with developers on the community benefit potentially associated with wind farms and other developments. The adopted policy required that any community benefit received from wind farms should be distributed within 10km of the development (70% within 5km and the remaining 30% within 10km). It was agreed that a Trust would distribute all community benefit payments. The Trust representation was to comprise a third of representatives from the council, a third from the local communities and up to a third from developers.

In December 2007, the Council Executive agreed to the establishment of WLDT in line with the council's wind farm community benefit policy. Four elected members were appointed onto the Trust, with four community representatives being appointed via external applications. Since it was established, WLDT has been distributing community benefit from Pateshill and Blacklaw wind farm in line with the policy.

### **D2 Review of West Lothian Development Trust**

In June 2012 WLDT commissioned an external consultant to carry out a review of the Trust. The purpose of the review was to determine if the current legal structure is still fit for purpose and to ensure that the Trust has the capacity to take on additional and potentially more complex negotiations and community benefit packages in future.

The contract was awarded to The Pool, the consultancy arm of Development Trust Association Scotland (DTAS). The £10,000 funding for the review was provided by West Lothian Council.

### **D3 Key areas of consideration by the review**

The scope of the review was as follows:

#### 1. A review of the current trust model

- To determine whether the current trust structure is still fit for purpose and to compare it with other models.
- To consider whether the trust would benefit from becoming a charity.

#### 2. The governance and reporting of the trust

- Review of financial reporting arrangements and general transparency of the trust.
- Consideration of how trustees, including the chair, are appointed and length of term served.
- The annual reporting mechanism and processes for reporting information.

#### 3. The purpose and strategic role of the trust

- The role of the trust in negotiations with potential wind farm developers.
- The possibility of long term investment options for the trust.
- The strategic direction of the trust, including the possibility of establishing a strategy fund.



#### 4. Existing legal agreements

- Consideration of existing legal agreements between WLDT and the developers.
- The impact on these agreements of any proposed changes to the trust.

The scope of the review did not include consideration of the Windfarm Community Benefit Policy or the underlying principles of the trust; it solely focused on the trust as a mechanism for collecting and distributing community benefit payments.

#### **D4 Recommendations of the review**

The review concluded by making the following recommendations:

- Address transparency issues by regular reporting on Trust decisions and accounts and making more information available on the structure and operation of the Trust.
- Raise the public profile of the Trust by more pro-active promotional work, establishing an independent website and increasing the distribution of publicity material.
- Implement changes to the board of trustees:
  - Introduce a three year fixed term of office for community trustees with the ability to re-appoint trustees for up to two consecutive terms.
  - Create a non-voting observer post in the trust for a representative of the wind farm operators to replace the current developer trustees.
  - Increase the number of community trustee positions to two thirds of the total.
  - Introduce annual re-appointment of the chair by the trustees.
- Publish procedures for recruitment and appointment of trustees.
- Review grant making with respect to the funding intervention rate and support to smaller organisations and small communities.
- Examine the viability of organisational change to a charitable company by setting strategic direction, developing the business case and clarifying future relationships with developers and West Lothian Council. Ratify the proposals with the community.
- As income increases, establish dedicated funds for strategic projects and to support local community development plans.
- In the longer term, develop WLDT as a more autonomous local community company that will be able to take a more active role in the negotiation of future community benefit funds.

#### **D5 Implementation of recommendations**

The following changes have been implemented since the Trust Review:

- Transparency: Financial reporting procedures have been agreed. A summary of activity to date (grants awarded) is now available on the WLDT page of the West Lothian Council website and annual accounts will be produced. Also now available to view on the webpage are the Trust Review report and the WLDT Deed of Trust.
- Publicity: guidance and application forms are available on the webpage and a yearly schedule of application deadlines is also now available.

- Board/Structure Changes:

- a. A three year fixed term of office has been introduced for trustees
- b. It has been agreed that the chair will serve a two year term and then be re-elected.
- c. The Trust has decided that an AGM will be introduced, commencing in September 2014. A new chair will be elected at this time.

It has been decided not to change the number or designation of trustees (council/community/developer).

The following points have been agreed but not yet implemented:

- A paper copy of application forms and guidance will be made available in main council offices and partnership centres.
- An annual report will be published and made available on the website. The first annual report will be presented at the AGM in September.
- A list of the current trustees and their status (council/community/developer) will be made available on the website.
- Procedures for the recruitment and appointing of trustees will be available on the website.

## **E. Conclusion**

In relation to the four key areas for consideration (as detailed at D3), the recommendations made by the review and the actions taken to date address the first two points. The existing Trust structure has been deemed to be suitable for the level of income the organisation is managing at the current time, however, the trust accepts that, as the income to the Trust increases, it would then be beneficial to reconsider its legal structure, including potential charitable status.

Financial reporting procedures are now in place (as detailed at D5), and the general transparency of the Trust has been improved. An annual report will be produced and an AGM held every year, commencing September 2014. Set terms of office have been agreed for trustees and the trust chair and these will take effect from the AGM.

The long term strategic direction of the trust will be reconsidered if the trust income significantly increases in the future.

## **F. BACKGROUND REFERENCES**

Report previously received at Partnership and Resources Policy Development Scrutiny Panel 20 April 2012 and 27 September 2013.

Appendices/Attachments: None

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**Steve Field**

**Head of Area Services**

**Date: 01 August 2014**



West Lothian  
Council

**PARTNERSHIP & RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL**

**RESPONSE TO CONSULTATION ON PROPOSALS TO REFORM FATAL ACCIDENT  
INQUIRY LEGISLATION**

**REPORT BY HEAD OF CORPORATE SERVICES**

**A. PURPOSE OF REPORT**

To invite the Panel to consider the response to the Consultation on Proposals to Reform Fatal Accident Inquiries Legislation.

**B. RECOMMENDATION**

It is recommended that that the Panel agrees to recommend to the Council Executive that it approves the response set out in appendix 1, for submission to the Scottish Government

**C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	<ul style="list-style-type: none"><li>• focusing on our customers' needs;</li><li>• being honest, open and accountable</li></ul>
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	There are potential financial and staffing implications should legislative changes be introduced following consultation
<b>VII</b>	<b>Consideration at PDSP</b>	N/A
<b>VIII</b>	<b>Other consultations</b>	Social Policy

**D. TERMS OF REPORT**

In 2008 a Consultation Paper – The Review of Fatal Accident Inquiry Legislation - was released by the Scottish Government.

West Lothian Council submitted a response to that Consultation. A report on the consultation responses was released in 2009. A report by Lord Cullen was released in 2009, following full review of the legislation. The report made recommendations affecting the existing legislative framework and how Fatal Accident Inquiries were dealt with by agencies such as the Scottish Court Service and The Crown Office and Procurator Fiscal Service. The Scottish Government published a response to the review in March 2011. The Scottish Government is now consulting upon the recommendations made by Lord Cullen, with a view to modernising of the way in which fatal accident inquiries are handled in Scotland. This includes proposals to implement new legislation to govern Fatal Accident Inquiries and update the existing legislative framework contained within the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

The consultation focusses specifically upon building on recommendations implemented by the Crown Office to make the system more efficient, extending the categories of death in which it is mandatory to hold a fatal accident inquiry, obliging those to whom sheriffs direct recommendations at the conclusion of the inquiry to respond to the sheriff about compliance, permitting discretionary FAls into deaths of Scots abroad where the body is repatriated to Scotland and options for holding FAls in alternative accommodation out-with sheriff courts.

The Council is not often represented at FAls, but was recently represented in an inquiry following a fatal road incident. As a result, the Council has recent, relevant experience of the current framework for fatal accident inquiries, allowing reflection on the process and informing consideration of improvements which could be introduced. This is reflected in the proposed responses contained within Appendix 1.

The impact upon the Council should an amended or new legislative framework be introduced, will be limited. The Council has limited involvement in fatal accident inquiries but will benefit from improvements introduced following consultation, should the Cullen recommendations be implemented.

## **E. CONCLUSION**

The Scottish Government is seeking the view of West Lothian Council on the proposals to reform the legislation on Fatal Accident Inquiries. There are issues of relevance to the council in this consultation. The Panel is invited to consider the response to the consultation and to recommend that the Council Executive approves the draft response attached at appendix 1

## **F. BACKGROUND REFERENCES**

1. Consultation on Proposals to Reform Fatal Accident Inquiries Legislation, Scottish Government: <http://www.scotland.gov.uk/Publications/2014/07/6772>
2. Review of Fatal Accident Inquiry Legislation, The Report, author Rt Hon Lord Cullen of Whitekirk KT: <http://www.scotland.gov.uk/Publications/2009/11/02113726/0>

Appendices/Attachments:

Appendix 1: Draft response to the Consultation

Contact Person: Caroline Kubala, Solicitor, Litigation Team, West Lothian Council, 01506 283190,  
[caroline.kubala@westlothian.gov.uk](mailto:caroline.kubala@westlothian.gov.uk)

Julie Whitelaw

Head of Corporate Services

Date of meeting: 1 August 2014



# CONSULTATION ON PROPOSALS TO REFORM FATAL ACCIDENT INQUIRIES LEGISLATION



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately. This consultation closes on Tuesday 9 September 2014.

### 1. Name/Organisation

Organisation Name

West Lothian Council

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

Surname

Forename

### 2. Postal Address

Legal Services

West Lothian Council, West Lothian Civic Centre

Howden South Road

Livingston

Postcode EH54 6FF

Phone

Email

### 3. Permissions - I am responding as...

Individual

☐

/

Group/Organisation

☒

*Please tick as appropriate*

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate* ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate* X Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

X Yes

☐ No

## CONSULTATION QUESTIONNAIRE

### Mandatory categories of FAIs

Question 1:

Do you think that the current mandatory provision for work-related deaths is sufficient?

Yes X      No ☐

Question 2:

Do you agree that a death which occurs when a person is 'arrested or detained by police' should be subject to a mandatory FAI?

Yes X      No ☐

Question 3:

Should the death of a child in 'secure care' be subject to a mandatory FAI?

Yes      No X

There ought to be mandatory investigation although it is not clear that FAI is the appropriate forum. The process can be unnecessarily distressing and formal for the family and relatives of the child or young person, and delays in progress of the FAI arising from eg Court timetabling can adversely impact upon progress. An alternative may be to consider the appointment of a judicial reporting or investigating officer following notification of death in terms of the Looked After Children (Scotland) Regulations 2009, in terms of which the Local Authority must notify the Scottish Ministers and Social Care and Social Work Improvement Scotland following death of a child or young person

Question 4:

Do you agree that any other categories of residential childcare, which are not defined as 'secure care', should not result in a mandatory FAI?

Yes X      No ☐

Consideration could be given to implementing procedures similar to that suggested in the previous answer.



Question 5a:

Do you think the aim of an independent investigation into the death of a person subject to compulsory detention by a public authority, that retains the traditional role of the Lord Advocate, should be met by an investigation by the procurator fiscal and exercise of the Lord Advocate's discretion on completion of that investigation?

Yes ☐ No ☒

Please see comment below.

Or

Question 5b:

Alternatively, do you think the option of a case review by a public authority such as the Mental Welfare Commission could be combined with a discretionary power to hold an FAI?

Yes ☒ No ☐

A case review by a public authority such as the Mental Welfare Commission alongside the discretionary power to hold an FAI should provide a higher level of scrutiny to such cases, and would potentially do more to ensure that improvements are made.

Question 6:

What impact do you think that the proposals in relation to the mandatory categories of FAIs will have on you, your organisation or community?

If the deaths of children in secure care were to be included in the mandatory category then it is possible that West Lothian Council and parents of the child or young person looked after by it will be represented in more FAIs.

## Deaths abroad

Question 7:

Should the Lord Advocate have discretion to hold an FAI into the death of a person domiciled in Scotland who dies abroad where the body is repatriated to Scotland?

Yes ☒ No ☐

Question 7a:

If you answered 'yes' to question 7, should the criteria to consider include:

(i) Whether there had been circumstances which called for investigation

Yes ☒ No ☐

(ii) Whether there had been a satisfactory investigation (in the country where the death took place) Yes X No ☐

(iii) Whether there was a prospect of an FAI yielding significant findings Yes X No ☐

Question 7b:

If you answered 'no' to any of the criteria in question 7a, please provide reasons for your answer

West Lothian Council has no comments on this issue.

Question 8:

What impact do you think this proposal will have on your, your organisation or community?

Very little impact – the authority is rarely engaged in such proceedings and is unlikely to require to be represented

## Delays

Question 9:

Do you agree with Lord Cullen's view that "it is plainly not practical or realistic to make it mandatory that an FAI must open within a certain period of the date of the death of the deceased... because of the diversity and potential complexity of the cases" which may mean that an incident is not properly investigated?

Yes X No ☐

The respondent agrees that it is not in the public interest to make it mandatory that an FAI must open within a certain period of time. Whilst it is desirable that matters are dealt with as quickly as possible, a variety of factors can mitigate against progress within a set timescale. It is necessary that the process should not take an unreasonable period of time, but it is considered that direction and guidance could be issued by the Scottish Government which would assist in mitigating undue delay

Question 10:

Do you agree that preliminary hearings should be held to help speed up the process of FAIs?

Yes X No ☐

Yes, Preliminary hearings would assist in focussing parties and issues/scope and remit for consideration at FAI

Question 11:

Will having pre-hearing meetings of experts speed up FAIs?

Yes ☒ No ☐

Potentially this will assist in focussing issues for consideration and determination by FAI

Question 12:

Will hearing some business in sheriffs' chambers help speed up FAIs?

Yes ☒ No ☐

Potentially this could assist in speeding FAIs up as allocation of Chambers hearings is often simpler than finding available court time within the Courts diary

Question 13:

Do you agree the proposal of permitting the submission of statements to the sheriff in advance of the FAI?

Yes ☒ No ☐

This may allow issues to be focussed and allow for restriction the scope of discussions at FAI to those matters which require detailed exploration

Question 14:

Should the sheriff principal be able to transfer the case to a different sheriffdom (area) if this is thought appropriate and if it may speed up the holding of the FAI?

Yes ☒ No ☐

Yes, where this would achieve convenient and expeditious progress of the FAI

Question 15:

What impact do you think that the proposals to speed up FAIs will have on you, your organisation or community?

West Lothian Council does not have an active role in FAIs very often, therefore moves made to speed up FAIs are likely to have little immediate impact although the Council will benefit from positive changes to the process when it does have occasion to participate

**Fatal Accident Inquiry accommodation**

Question 16:

Do you agree with the proposal that the majority of FAIs should be dealt with in ad hoc locations, but FAIs which relate to deaths in rural or remote areas should still be dealt with in local sheriff courts?

Yes ☒ No ☐

FAIs ought to be held in the most convenient location having regard to the participants. In some areas that will be the Sheriff Court but need not necessarily be

Question 17:

Do you think that all FAIs in Scotland should be held in three bespoke, dedicated centres?

Yes ☐ No ☒

No, as this would potentially result in inconvenience to the participants. Consideration should be given to the option of having dedicated FAI facilities within wider integrated justice centres, and existing facilities

Question 18:

What impact do you think that the use of FAI centres, or taking FAIs out of sheriff courts, will have on those attending FAIs?

See comments above at questions 16 and 17, the main impact is likely to be inconvenience for attendees

### **Sheriffs' recommendations**

Question 19:

Should it be mandatory for all FAI determinations, subject to redaction, to appear on the SCS website and be fully searchable?

Yes ☒ No ☐

Question 20:

Do you think that sheriffs should instruct the dissemination of their recommendations (if any) to the parties to whom they are addressed and any appropriate regulatory bodies?

Yes ☒ No ☐

This would be helpful in advancing change in the public interest

Question 21:

Do you agree that parties to whom sheriffs' recommendations are addressed should be obliged to respond to the sheriff who presided over the FAI indicating what action had been taken? This would be on the basis that those parties would not be obliged to comply with the sheriff's recommendations, but if they have not complied they would be obliged to explain why not.

Yes ☒ No ☐

This is important to ensure accountability and ensure credibility and scrutiny of FAI recommendations and permit monitoring of recommendations which could inform practice and legislative development

Question 22:

What impact do you think that the proposals regarding sheriffs' recommendations will have on you, your organisation or community?

Impact will depend upon the nature and extent of recommendations made. It is conceivable that there could be financial and policy considerations

### **Legal aid for bereaved relatives**

Question 23:

Do you agree that the existing arrangements for legal aid for bereaved families at FAIs should remain?

Yes ☒ No ☐

This is important to ensure access to judicial proceedings for those who have a legitimate need to participate and be represented although robust assessment criterion are essential to ensure that representation is necessary for the purposes of ensuring a full inquiry

Question 23a:

If you answered 'no' to question 23, in what ways would you change the arrangements for legal aid for bereaved families?

West Lothian Council has no comments on this question.

Question 24:

What impact do you think this proposal will have on you, your organisation or community?

There should be no discernable impact provided that there is merit in

representation on behalf of the bereaved families for the purposes of the inquiry

## **End of Questionnaire**

### **EQUALITY IMPACT ASSESSMENT**

The purpose of carrying out an Equality Impact Assessment is to aid the Scottish Government in discharging its Public Sector Equality Duty under section 149 of the Equality Act 2010. The Scottish Government is required to assess the impact of applying a new or revised policy or practice against the needs in the public sector equality duty - to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations.

The protected characteristics that must be profiled against the policies are:

- Age
- Sex
- Pregnancy and maternity
- Disability
- Race
- Religion or belief
- Gender Reassignment
- Sexual Orientation

To help inform our Equality Impact Assessment of the policy proposals to reform FAI legislation, it would be helpful if you could answer the following question.

Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

Developments in the legislative framework will benefit all participants in FAI proceedings and ensure robust, open and transparency of process and outcomes. Consideration in relation to publication of FAI reports and recommendations, in addition to monitoring of recommendation implementation/reasons for failure to implement recommendations, will support informed development of practice and policy.



West Lothian  
Council

## **PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL**

### **PAYMENTS TO VOLUNTARY ORGANISATIONS**

#### **REPORT BY HEAD OF AREA SERVICES**

##### **A. PURPOSE OF REPORT**

The report updates the Panel on delays in making payments to voluntary organisations for 2014-15 and the council's response to ensure an improved service in processing 2015-16 payments.

##### **B. RECOMMENDATION**

It is recommended that the Partnership and Resources PDSP notes the report.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; providing equality of opportunities; making best use of our resources; and working in partnership
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Under the terms of the Local Government in Scotland Act 2003, the council has a statutory duty to secure best value and continuous improvement in the delivery of all its services, including funding and support of outside bodies.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on Performance and Performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	Contributes to SOA Outcome: We live in resilient, cohesive and safe communities.
<b>VI Resources - (Financial, Staffing and Property)</b>	Payments made from agreed budgets.
<b>VII Consideration at PDSP</b>	None.
<b>VIII Other consultations</b>	Input from Finance and Estates Services.

## **D. TERMS OF REPORT**

### **D1 Introduction**

West Lothian Council makes payments to voluntary organisations on a commissioned, contracted or grant funded basis in relation to the delivery of activities and services which contribute to shared outcomes. Depending on the amount of funding organisations receive either a single payment at the start of the financial year or two payments in April and October.

The initial 2014-15 payments were delayed this year for a number of reasons including staff changes and availability, and adjustments to the method of calculation of payments.

### **D2 Complaints**

A concern about delayed payments was raised by the Voluntary Sector Gateway West Lothian on 29 April 2014, following receipt of an e-mail from a member organisation that they had not received their payment by the end of April. E-mails were subsequently received from a further two organisations.

Payments were processed by Social Policy on 28 April and were received by organisations soon afterwards. Area Services made payments by CHAPs on 9 May which would be received by organisations on the same day.

However, in response to the issues that had arisen a commitment was made to review the payment process to voluntary organisations and, specifically, to:

- Notify all voluntary organisations of their funding for the future year within an agreed timescale following approval of the annual budget
- Confirm with voluntary organisations the date on which payments will be processed and advise organisations of the transaction time after that
- Remind organisations that if this is likely to cause them cash flow problems then they should contact the council as soon as possible to establish if alternative payment schedules can be made.

An e-mail was received from VSGWL thanking the council for the prompt and considered response.

### **D3 Audit of Payments to Voluntary and Not for Profit Organisations.**

Following the delays experienced in making payments, it was agreed that Internal Audit would undertake an audit of payments to voluntary and not for profit organisations. The objective of the audit was to review the arrangements for making payments to voluntary and not for profit organisations, covering both contractual and grant payments. This was to include a review of the issues surrounding the delays in making 2014-15 payments.

The Action Plan resulting from the audit identifies potential risks resulting from area for improvement in the current arrangements. These include:



- There is no up to date master list of funded organisations which has been agreed by services. This list should include information such as the service, organisation funded, link officer name, ledger code, who makes payment, amount of payment, associated rent and service charges and whether the service is commissioned or contracted, or grant funded.
- It was noted that for funding in excess of £25,000 Social Policy make payments in two instalments, in April and September. Area Services would not appear to have adopted a similar approach and have made three single payments in excess of £25,000. A consistent approach should be adopted across the council
- Social Policy and Area Services advised that organisations are required to have three months' funding in reserves to deal with unexpected financial circumstances. This requirement should be considered for inclusion in future funding agreements.
- The year-end accounting procedures currently do not make any reference to the options for making early April payments. It would be beneficial if the year-end procedures were reviewed and updated.
- Payments to voluntary and not for profit organisations are currently initiated by the council. However it is noted that a large number of the organisations actually provide commissioned or contracted services and the relationship with the council is more aligned to that of a supplier as opposed to a grant funded organisation.

In such instances consideration should be given to making changes to contracts or funding agreements to require these organisations to submit invoices to the council.

- Social Policy has, over the last few years, developed a Contract Monitoring Framework which provides a structured and risk based approach to monitoring organisations they commission services from. Area Services has been developing separate arrangements for monitoring organisations and updates have been provided to the Voluntary Organisation PDSP since 2011. Currently annual 'health checks' are undertaken on organisations.

As both Social Policy and Area Services are commissioning and contracting services from voluntary and not for profit organisations, there is scope for a more consistent approach to monitoring these organisations. Area Services should consider implementing monitoring arrangements similar to those operated by Social Policy.

- Arrangements for making 2015/16 payments should be progressed in accordance with agreed procedures'.

The final report will include findings, conclusions and an action plan. The agreed actions will be put in place to ensure an improved process for making payments for financial year 2015-16.

## **E. CONCLUSION**

There were delays in 2014-15 payments to voluntary organisations on a commissioned, contracted or grant funded basis in relation to the delivery of activities and services which contribute to shared outcomes.

When concerns were raised over the delays, action was taken to accelerate payment and a commitment given to the sector as to what would happen in the future to ensure that this was not repeated. An internal audit has been undertaken and an action plan

will be developed in response to the findings contained within that.

## **F. BACKGROUND REFERENCES**

Appendices/Attachments: None

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Steve Field  
**Head of Area Services**

Date of meeting: 1 August 2014

**PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL  
WORKPLAN TO 5 SEPTEMBER 2014**

	<b>Agenda Item</b>	<b>Lead Officer</b>	<b>P&amp;R PDSP Date / Month</b>
1.	Lothian Valuation Joint Board annual report	Chief Executive	Annually 23 January 2015
2.	Quarterly Performance Report	Depute Chief Executive, Corporate, Operational and Housing Services	Quarterly 5 September 2014 28 November 2014 20 February 2015 5 June 2015
3.	Quarterly Welfare Reform update	Head of Finance and Estates	Quarterly 5 September 2014 28 November 2014 20 February 2015 5 June 2015
4.	Quarterly Sickness Absence Update	Head of Corporate Services	Quarterly 5 September 2014 28 November 2014 20 February 2015 5 June 2015
5.	Minutes of Scotland Excel Meetings	Head of Finance and Estates	As available
6.	Lothian Valuation Joint Board minutes	Chief Executive	As available
7.	Advice Shop Contribution to Anti-Poverty	Head of Area Services	5 September 2014
8.	Policies And Practices in the Management Of The Council's Non-Operational Property Assets	Head of Finance and Estates	Date TBC
9.	Financial Inclusion	Head of Finance and Estates	Date TBC
10.	Progress Report – Investment in schemes to create employment opportunities	Head of Area Services	Date TBC
11.	Disposal of Land by Local Authorities (Scotland) Regulations 2010	Head of Finance and Estates	Date TBC

Graham Hope  
Chief Executive

**DATA LABEL: PUBLIC**