

5.8 Joint Protocol on seeking the External Auditor's Views on the Legality of Council Transactions

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JOINT PROTOCOL FOR CIRCUMSTANCES UNDER WHICH THE APPOINTED AUDITOR'S VIEWS ARE SOUGHT ON THE LEGALITY OF TRANSACTIONS

1. Introduction

1.1 This protocol sets out the arrangements for those instances where the Authority, or individual officers and members of the Authority, seek the views of the Appointed Auditor on the legality of transactions, whether proposed or already implemented; and where the public refer questions or enquiries to the Appointed Auditor. The key considerations underpinning this approach are the need to:

- Clarify both the basis on which the Appointed Auditor can comment on the legality of transactions and responsibilities of officers for ensuring transactions which may be embarked upon are legal;
- Ensure greater co-ordination and consistency in the manner by which the Authority, its members and its officers request the Appointed Auditor to comment on transactions;
- To set out our general approach for dealing with enquiries, questions and objections received in the course of the audit from eligible persons; and
- Have improved joint monitoring of the status of individual requests and enquiries, including the additional costs arising for the Authority.

2. Status of this Protocol

2.1 This protocol sets out the basis on which the Appointed Auditor comments on the legality of transactions and promotes effective monitoring and control of such requests.

2.2 This protocol deals with requests received pertaining directly to the legality of transactions and proposed transactions. It also covers those instances in which the Appointed Auditor is requested by members to comment on the appropriateness of actions taken, or proposed to be taken, by the council.

2.3 This protocol also refers to the Appointed Auditors responsibilities in respect of enquiries, questions and objections received in the course of the audit from eligible persons, and the monitoring arrangements proposed will be applied to such work.

2.4 General discussion pertaining to our audit of the Authority's financial systems and final accounts are considered to fall within the remit of our normal, ongoing, audit work. Whilst there may be an impact on the total level of resources required for the audit in any given year, this would be expected to be dealt with as part of the agreement of the annual plan and subsequent variations to it.

3. Background

3.1 The Authority's framework of financial and management control is currently based on delegation to departments balanced with the retention of adequate corporate control. Service Directors are responsible for ensuring adequate arrangements are

in place for proper financial administration, which encompasses ensuring transactions embarked on are lawful.

- 3.2 This protocol sets out the procedures agreed to be put in place to enhance the effectiveness of the arrangements both the Audit Commission and Slough have in place for dealing with both requests for comments on the legality of transactions, and questions and enquiries.

4. The role of the Audit Commission and Officers

- 4.1 The respective roles of officers, and the Appointed Auditor, are clearly set out in the Code of Audit Practice (“the Code”) and the Statement of Responsibilities of Auditors and Audited Bodies. In summary, it is the responsibility of audited bodies and their officers to act within the law; auditors are required to bear in mind the question of legality and take reasonable steps to inform themselves of significant financial transactions or events that are unusual or of questionable legality.

- 4.2 It is in the context of this framework of responsibilities that requests for our comments would be viewed. We want to be as helpful as possible and work closely with officers to avoid the significant costs associated with the reversal of decisions or transactions, which are subsequently found to be unlawful. In general our approach to matters of legality both referred to us by officers and identified in the course of our audit reflects the understanding that we are not in a position to definitively interpret legislation, which is a matter for the courts, and that ultimate responsibility for ensuring the lawfulness of transactions embarked on resides with officers. We seek to provide ourselves with assurance that a transaction, or proposed course of action, is lawful by:

- Keeping abreast of the key issues involved, in particular, those aspects of a proposed transaction on which officers, or their advisors have concerns;
- Taking into account existing guidance, if any, pertaining to the matter under consideration;
- Ensuring officers, including the Monitoring Officer and his advisors, have given the matter in question due and proper consideration and that they have taken appropriate steps to assure themselves that a particular transaction, or course of action, is lawful and within the Authority’s powers.

- 4.3 The Authority should not seek to rely solely on the view we express with regard to a particular issue, because:

- It remains the responsibility of the Authority and its officers to decide whether to embark on any transaction;
- We are not legal practitioners and consequently are not in a position ourselves to definitively interpret legislation;
- We may not act in any way that might fetter our future ability to exercise the specific powers conferred upon us by statute.

- 4.4 Moreover, the fact that we may respond to a request does not mean that the proposed transaction or course of action will be exempt from challenge in the future.

5. Approach to Requests for our views by Officers and Members

- 5.1 Within this framework it is possible for us, in conjunction with officers to play an important part in helping the Authority to avoid the potentially significant costs associated with considering arrangements which are subsequently found to be unlawful. In order for this objective to be achieved cost effectively the Council should follow the steps set out below:

Step 1

Requests from individual Members or Officers of the Council should be raised in the first instance with the Monitoring Officer (or a nominated deputy) and s/he will arrange for the issues of concern to be fully considered by the appropriate Officers in accordance with Step 2 below.

Step 2

The Officers within the Council will ensure that all of the issues of concern which are raised are fully considered and prepare a report setting out their conclusions and the rationale behind them. If concerns remain these should be highlighted before any reference is made to the Audit Commission.

Step 3

If after Steps 1 and 2 have been carried out a request to the Audit Commission is still considered necessary then such requests will be forwarded by the Monitoring Officer or his nominated deputy with all supporting papers. In particular the supporting papers must include any sources of advice or legal opinion relied upon by the Officer in their report. All requests referred to the Audit Commission will be copied to the Chief Executive.

- 5.2 It is at the discretion of officers, through the Monitoring Officer, to decide on the matters referred by the Authority to us for our views. In order to best assist the Authority we would, however expect those issues which are either significant in terms of their potential financial effect, or of particular local sensitivity, to be brought to our attention at an early stage to allow us sufficient time to consider the issues involved fully and to make officers aware of our views (subject to the limitations imposed on our views as set out above) before a final decision is taken.
- 5.3 In instances where the issues concerned are material, or legally complex, the Appointed Auditor will promptly advise the Authority when we have determined we need such legal advice. In normal circumstances we would be willing to share any advice we obtain.
- 5.4 Notwithstanding the above we will however require annual confirmation from the Monitoring Officer that no matters have been referred to him which should have been brought to the Audit Commission's attention. This annual confirmation will supplement our normal request for confirmation from the Authority's Monitoring

Officer (or his deputy) that he is not aware of any transaction, or course of action, which should be brought to our attention.

6. Dealing with Enquiries and Questions from electors

- 6.1 An elector has the right to inspect, question and object to a local Authority's accounts, as outlined in greater detail in *The Rough guide to Audit Law* which is available from the Audit Commission.
- 6.2 The rights of the public are limited to asking questions about an authority's accounts. There is no statutory right to ask questions about a local authority's policies, finances or procedures, which are not about the accounts. In practice, where we receive questions which do not refer to the accounts,
- we can indicate to the enquirer that it is open to them to seek the information directly from the Authority. In general, we would not act as a conduit for questions to, and replies from, the Council; or
 - we may enquire into the matter brought to its attention where it may concern potentially unlawful activities or transactions by the Authority. We are not bound to provide a response but would try to keep the enquirer informed in general terms about any relevant work we undertake.
- 6.3 In all circumstances we would notify the Monitoring Officer of the matters referred to us by the public and the proposed course of action that we intend to adopt. Where officers are of the view that an issue referred to the Appointed Auditor by a member of the public merits further investigation, the issue would be dealt with as if referred to us by officers.

7. Monitoring Requests

- 7.1 The Appointed Auditor will keep the Monitoring Officer informed of all requests received setting out their progress and current status, including the actions taken by the Appointed Auditor or required of the Authority, together with details of our resource inputs, analysed by grade.
- 7.2 This also applies to all enquiries, questions and objections received from eligible persons. These will be copied as a matter of course to the Chief Executive, the Monitoring Officer and the Director of Finance and Resources.

8. Fee Arrangements

- 8.1 Fees for such work will be charged at the Audit Commission's grade related fee rate, reflecting the seniority and experience of the staff involved.
- 8.2 We would expect, where the costs are significant, to bill monthly in arrears for such work, following the agreement of the fees with the Monitoring Officer.