

Title of Report:	Legal Services Internal Audit Report
Committee Report Submitted To:	Audit Committee
Date of Meeting:	8th Dec 2021
For Decision or For Information	For Information

Linkage to Council Strategy (2019-23)	
Strategic Theme	Improvement and Innovation
Outcome	All – Providing effective, accessible, and sustainable local public services
Lead Officer	Audit, Risk & Governance Manager
Cost: (If applicable)	n/a

Budgetary Considerations	
Cost of Proposal	n/a
Included in Current Year Estimates	YES/NO
Capital/Revenue	Revenue
Code	n/a
Staffing Costs	Internal Staffing Cost to Complete

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes/No	Date:
	EQIA Required and Completed:	Yes/No	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No	Date:
	RNA Required and Completed:	Yes/No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No	Date:
	DPIA Required and Completed:	Yes/No	Date:

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Executive Summary

This internal audit was completed in accordance with the approved annual Internal Audit Plan for 2021/22. This report summarises the findings arising from a review of Legal Services section within Council which was allocated 8 days. The area of Legal Services has not previously been audited within the Causeway Coast and Glens Borough Council. Internal Audit has undertaken this review to assist in identifying any areas of improvement and to assist in providing surety that the Legal Services section is providing a robust, professional and reliable legal service to the Council.

A number of areas have been highlighted in this report where controls could be enhanced. The following table summarises the total number of recommendations from our audit (all recommendations being accepted by management):

Risk	Number of recommendations & Priority rating		
	1	2	3
There may be inappropriate management and oversight of legal services resources leading to issues with the quality of legal services being provided and possible non-compliance with legislation and reputational damage	-	3	1
There may be ineffective management and oversight of legal cases resulting in inconsistencies in how cases are accepted and managed, leading to possible delays or non-compliance with legislation and reputational damage	-	2	1
Total recommendations made	-	5	2

Based on our audit testing we can provide the following overall level of assurance:

Limited

There are significant weaknesses within the governance, risk management and control framework which, if not addressed, could lead to the system objectives not being achieved.

The weaknesses identified during the course of our audit have been brought to the attention of Management. The weaknesses outlined are those, which have come to our attention during the normal audit work and are not necessarily all of the weaknesses, which may exist. The content of this report has been discussed with the Head of Legal Services to confirm factual accuracy. The assistance and cooperation received during the course of our review is gratefully acknowledged.

Objective

The main objective of the audit was to review the management and oversight of the legal services being provided and the application process of how cases are accepted, managed or cases of possible non-compliance with legislation.

This report has been prepared for the Members of Causeway Coast and Glens Borough Council and should not be disclosed to any third party, quoted, or referred to without prior written consent of the author.

Background

Legal Services provide advice and assistance to officers, the Chief Executive and Elected Members. Legal Services cannot, however, provide legal advice to members of the public. The Legal Services section reports directly to the Chief Executive. Currently, the Solicitors are specifically assigned to departments, these working practices have led each team member to have their own specialist area.

The Senior Solicitor has overall responsibility for the legal services function. The current structure for Legal Services is as follows:

Full time – Permanent Employees



Temporary Employees

Administrative support is provided by the Councils paralegal. In addition to the current staffing structure an Assistant Council Solicitor (Land and Property) has been agreed by Council for recruitment.

This structure has been adopted from 2021 by Senior Leadership Team (SLT) though not yet approved at Council. CCGBC Legal Services have been in existence since 2017/2018 prior to these legal services were contracted out to Derry City and Strabane District Council.

Corporate and democratic matters including planning and management of staff are dealt with by councils' Senior Solicitor who attends full council and committee meetings as required

All land and property matters including first registration, public rights of way, leases, purchases and sales are dealt with Council Solicitor (Land and Property) who attends the Land and Property Sub Committee.

Planning matters (including Planning prosecutions in the future) are dealt with by Council Solicitor (Planning and Regulatory) who attends the Planning Committee.

Paralegal assists the above in the provision of various services and also administrative support. The Assistant Council Solicitor (Land and Property) will assist the Council Solicitor (Land and Property).

Legal services are not engaged in:

- Contract or procurement matters (other than general advice)
- Employment Law/HR
- General prosecutions and enforcement (criminal matters)
- Claims and litigation against council
- General debt recovery and small claims – which are dealt with directly by Finance with assistance of Legal Services

Risks

The risks identified relating to the audit of the legal services section and agreed with management are as follows:

- There may be inappropriate management and oversight of legal services resources leading to issues with the quality of legal services being provided and possible non-compliance with legislation and reputational damage.
- There may be ineffective management and oversight of legal cases resulting in inconsistencies in how cases are accepted and managed, leading to possible delays or non-compliance with legislation, and reputational damage.

Audit Approach

Our audit fieldwork comprised:

- Documenting the systems via discussions with key staff
- Consideration of the key risks within each audit area
- Examining relevant documentation
- Carrying out a preliminary evaluation of the arrangements and controls in operation generally within the Council
- Testing the key arrangements and controls
- Testing the completeness and accuracy of records.

The table below shows the staff consulted with and we would like to thank them for their assistance and co-operation.

Job title

Senior Council Solicitor

Land and Property Council Solicitor

Planning Council Solicitor

Council Paralegal

Findings and Recommendations

This section of the report sets out our findings in relation to control issues identified and recommendations.

6.1 Risk 2

Issue 1 – Records Management

a) Observation-

The legal services team identified that there is no central record of all hardcopies legal agreements entered by the Council. Legal services maintain a manual spreadsheet as its case management system which records details of current live cases and details of cases that have been concluded and closed off. This spreadsheet does not include all agreements entered by the Council for other Service Areas. It was noted that an electronic case management system is used by a number of other Councils to record their legal portfolio.

Prosecutions are progressed by Derry City and Strabane District Council, with no central record held by Causeway Coast and Glens Borough Council legal services for the tracking or monitoring of such cases.

b) Implication-

In the absence of a centralised record for all legal agreements entered by the Council there is a risk that there is insufficient oversight, accountability, and accessibility for arrangements in place.

There is a potential risk around the accessibility of agreements and the processes to ensure that all files can be easily located.

c) Priority Rating-

2

d) Recommendation-

Audit recommends that the manual spreadsheet includes a tab to ensure that there is an adequate, complete record of all legal agreements entered, detailing physical location.

This should include prosecutions and criminal matters that are undertaken on behalf Causeway Coast and Glens Borough Council. This will assist with understanding the nature and scale of the legal services requirement within Council going forward.

e) Management Response-

Currently Legal do not have the budget or resources to maintain central records for all Council Departments. Further Legal Services are not currently engaged in Environmental Services, HR and Employment Law, and Insurance Defence Litigation

who all hold their own records and are responsible for same being the instructing Department to the external Legal Source.

Responsible Officer & Implementation Date-
Senior Council Solicitor

6.2 Risk 1

Issue 2 – Co-Operation Agreement / SLA between Councils

a) Observation-

A 'Co-operation Agreement' for legal services between Derry City and Strabane District Council and Causeway Coast and Glens Borough Council is in place.

Two copies of the 'Co-operation Agreement' for legal services between Derry City and Strabane District Council were provided to audit. The first document was dated for the period 1st December 2018 to 31st March 2020, this document was unsigned. The second copy provided to Audit was for the period 1st April 2020 until 31st March 2023, this document was not updated in terms of dates, however it did contain an electronic signature on behalf of the Chief Executive.

The agreement details the provision of a comprehensive and quality level services in respect of both contentious and non-contentious matters and together with general legal advice. Derry City & Strabane District Council legal services team carry out much of the legal work for Health & Built Environment, the internal legal services team do not have the capacity or expertise to complete this work at present. This work involves all enforcement prosecutions including dog related matters, dangerous structures, fixed penalty notices, abatement notices, public health advice.

It was noted that the implementation of this co-operation is governed solely by consideration relating to the public interest and the legal services detailed herein will be provided by each party at cost and on a not-for-profit basis only which is reassuring. However, timescales are not included within the document to ensure that any backlog of legal cases for Causeway Coast and Glens Borough Council is dealt with in a timely fashion.

The Co-operation Agreement includes a 'Time Recording and Response Turnaround' paragraph. This paragraph includes details of how time shall be recorded in units of 6 minutes. The Service Provider undertakes to keep an accurate record of time spent on behalf of the Service User and to ensure that time is not spent unnecessarily. This paragraph does not detail expected response turnaround times within the document. Audit notes that legal services do not currently operate a time recording system either manually or electronically to record time chargeable to Derry City and Strabane District Council or indeed time records for Judicial Review.

b) Implication

<p>There is a risk that Co-Operation Agreement does not accurately reflect the work performed on behalf of the Council, and legal issues may not be dealt with in a timely manner.</p>
<p>c) Priority Rating- 2</p>
<p>d) Recommendation- Audit would recommend that the 'Co-operation Agreement' between Derry City and Strabane District Council is updated and signed at the earliest opportunity reflecting only the work currently undertaken on behalf of the Council.</p> <p>It is also recommended that the Co-operation Agreement be updated to reflect agreed KPIs to include timescales expected for the handling of Causeway Coast and Glens Borough Council workload.</p>
<p>e) Management Response- The SLA with Derry City & Strabane District Council will be updated in line with the current Legal Services structure.</p>
<p>Responsible Officer & Implementation Date- Senior Council Solicitor</p>

6.3 Risk 2

Issue 3 – Legal Services Instruction Form

a) Observation-

When a service area avails of the legal services section for advice and assistance 'a Legal Services Instruction Form' should be completed by Council officers prior to legal services commencing the assignment. The instruction sheet contains information such as the following:

- Instructing Service/Directorate
- Instructing Officer
- Main Point of Contact
- Is there an overlap with any other Service area(s)/Directorate(s)
- Name and title of the matter and names of any involved parties
- Background of the matter and the relevant issues
- Outline of what officer requires legal services to do
- Deadlines, timeframes that might impact on the advice required
- List of Enclosures, examples include, All Council approvals including reports and minutes. Draft document for review, maps, third party solicitor's details and any relevant supporting documents for the matter that we will require.

All sections of the instruction form should be completed, and relevant supporting information and documents provided to Senior Council solicitor prior to the commencement of the assignment. The proforma is designed to streamline the way legal services are being requested and delivered across Council services. This approach is in line with the Council's values and aims to embed a culture of continuous improvement that ensures an effective and efficient delivery of legal services throughout the organisation.

<p>Audit sought legal advice in respect of an ongoing technical issue, audit would consider this to be a walkthrough test of the service area. Audit did not receive a legal opinion for the issue requested. The completion of an instruction sheet may have made clear the opinion required by audit.</p> <p>From discussions held with legal services staff it is understood that these forms are not being used consistently with no instruction sheets received in most instances or signed off by the Heads of Service/Directors/Chief Executive prior to advice being given. It was further noted that the form is not readily available on the Staff Portal for officers to download for completion.</p>
<p>b) Implication- The risks surrounding not completing an instruction sheet prior to providing advice include:</p> <ul style="list-style-type: none">- All relevant information may not be given before a legal opinion is received- Verbal instructions for legal advice may be misconstrued- Inappropriate progression of cases has taken place
<p>c) Priority Rating- 2</p>
<p>d) Recommendation- Before legal advice is undertaken or procured a completed instruction form should be received from the instructing officer to ensure the appropriate budget holders are aware of the expenses to be incurred and that legal requests are proportionate and necessary. The instruction sheet should be signed off by the Director/Chief Executive before any work is undertaken. All sections of the instruction sheet should be completed, and all available information/documents received prior to legal advice being provided.</p> <p>The Legal Services Instruction Form should be readily available on the Council's staff portal for staff to access.</p>
<p>e) Management Response- Legal Services has the correct form in place, which some considerable time ago had been circulated amongst the Directors. A request for the Legal Instruction Form has been submitted to IT for inclusion on the Portal.</p>
<p>Responsible Officer & Implementation Date- Senior Council Solicitor</p>

6.4 Risk 1

Issue 4 – Criteria for engaging external legal services

<p>a) Observation- The legal services section uses both internal solicitors and external counsel to provide a range of legal services to the organisation including:</p> <ul style="list-style-type: none">- General Counsel to the whole organisation- Land and Property Advice- Planning and judicial review Advice <p>Currently the allocation of contracted out work is based on professional judgement by the Senior Council Solicitor, Council's procurement policy is not followed in that a preferred list is not in place. The main reasons for contracting work out would</p>
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<p>include it is outside of the Council legal services areas of expertise, examples of this may include procurement, specialist corporate law, and litigation.</p> <p>Audit noted that a number of call-ins are contracted out to external legal counsel which is both costly to Council and which may not always achieve best value or add value to the section. Audit recognise that there may be times the need for specialist external legal support for issues of high sensitivity, but we are not convinced the balance between in-house provision and external support is as optimal as it might be. The same legal Counsel is used to provide call-in opinions and provide training to the Planning committee.</p>
<p>b) Implication- There is a risk that Council may not receive best value in the awarding of legal services.</p>
<p>c) Priority Rating- 2</p>
<p>d) Recommendation-</p> <ul style="list-style-type: none">• Further <u>criteria</u> should be developed for engaging external legal services.• Whilst procurement for legal services falls within the exclusions for service contracts under the Public Contracts Regulations audit recommends that a select list or preferred <u>list</u> of external counsel should be documented; this should be put in place considering the various areas of expertise and the reputation of difference counsel Council has worked with in the past.• Where external legal services are used to deliver training within Council, legal services should adhere to Council's procurement policy with the aims of achieving best value outcomes.• An outsourcing <u>form</u> should be developed and completed documenting the rationale for outsourcing and the justification clearly documented as to why a particular legal firm/ Counsel has been instructed to undertake the specify work. The reasons should be clearly documented and held on file for inspection purposes.
<p>e) Management Response- A preferred list is in place based on cost, expertise, and availability. In respect of outsourcing, Legal Services do not currently outsource to other firms of solicitors, however an outsourcing form will be developed and if any future outsourcing.</p>
<p>Responsible Officer & Implementation Date- Senior Council Solicitor</p>

6.5 Risk 1

Issue 5 – Legal Services Structure

a) Observation-

In 2015, Council entered into a Co-operation Agreement with Derry City and Strabane District Council (DCSDC) to avail of legal services expertise. In 2018 Council prepared a paper to recommend that Council proceeds to develop a new Legal Services Team based on the structure as outlined below:



Audit noted that the legal services structure has only been in place since mid-2021. Until this structure was in place, legal services has been limited in its ability to comply with Council's governance requirements including a business plan, risk register, business continuity plan.

Council faces the unique challenge of managing some 1500 parcels of land and property over a wide geographical area, with a number of these properties having been encroached upon over the past number of years. Increased planning applications in the area have seen an increase in the number of challenges by various parties, therefore requiring extensive input from legal services in terms of call-ins, judicial reviews, etc.

b) Implication-

Legal Services face significant challenges in the delivery of its role and responsibilities within Council. There is a risk that the legal services section do not meet Council officers expectation.

c) Priority Rating-
2

d) Recommendation-

The Legal Services section has gone through staff changes over recent years, with positions only recently being permanently filled. It is important that establishing and determining the optimal level of resources, staff complement and composition of the legal services section, this will improve business processes and service delivery.

It is recommended that Council approval be sought for the new structure in place and a clear understanding of the role of legal services within Council be established. Policies and procedures be implemented to support case management within the section.

e) Management Response-

A report will be brought to Council outlining the current position and seeking to formalise the structure of Legal Services that is in place.

Responsible Officer & Implementation Date-

Senior Council Solicitor, Implementation will be dependant on SLT and Council approval, anticipated to be brought early 2022.

6.6 Risk 2

Issue 6 – Reconciliation of Deeds held to the register

a) Observation-

Council currently holds title for land and property in the region of over £200 million. An exercise is currently being undertaken to register property which remains unregistered. This exercise is expected to take some time to complete, this

<p>includes the full review of title deeds for the unregistered property. Audit were informed that to date Causeway Coast and Glens Borough Council have been unable to perform a reconciliation process for the deeds held in the legacy four Councils.</p>
<p>b) Implication- There is a potential risk around the accessibility of title deed documents and the Councils processes to ensure that all deeds can be easily located.</p>
<p>c) Priority Rating- 3</p>
<p>d) Recommendation- A deeds register should be used to establish an adequate and complete record of all deeds held and their physical location. Deed envelopes should refer back to the register and be easily identifiable within the strong room. When deeds are removed from the strong room the register should be signed by the officer removing them and an explanation provided as to why deeds documents are being removed. Once established a regular reconciliation of deeds should be carried out periodically to ensure all deeds are present and complete.</p>
<p>e) Management Response- A Deeds Register is already in place, held by L&P Services, who have responsibility for the safe keeping of Title Deeds. The Register is also cross referenced with Council's GIS Department. L&P Services already hold a sign in and out register in respect of Deeds held in Council's Strongroom.</p>
<p>Responsible Officer & Implementation Date- N/A</p>

6.7 Risk 1

Issue 7 – Conflict of Interest Declarations
<p>a) Observation- A conflict-of-interest check should be held for each contracted out case that is opened. The external provider should complete this declaration to protect the Council from reproach and can evidence that potential conflicts have been considered. From a number of files sampled there was no evidence that a conflict-of-interest check had been carried out by the fee earner.</p>
<p>b) Implication- There is a risk that cases may be progressed for legal action that should not be.</p>
<p>c) Priority Rating- 3</p>
<p>d) Recommendation- Evaluations and declarations of interest should be completed by external providers and retained to ensure compliance with best practice and demonstrate that there are no conflicts of interest.</p>
<p>e) Management Response- Conflict of Interest matters are already dealt with the professions' respective regulatory bodies. Solicitors are subject to the Solicitor's Regulations and enforced by the Law Society of N. Ireland. In respect of Counsel, similarly they are governed by a Code of Conduct, which is enforced by the Bar Council.</p>
<p>Responsible Officer & Implementation Date- N/A</p>

Conclusion

The internal control environment, no matter how well designed and operated, can provide only reasonable and not absolute assurance regarding achievement of an organisation's objectives. The likelihood of achievement is affected by limitations inherent in all internal control systems. These include but are not limited to the possibility of poor judgement in decision – making, human error, control processes being deliberately circumvented by employees and others, management overriding of controls and unforeseen circumstances arising.

The risk associated with the Legal Services is medium; recommendations should be implemented in a timely fashion.

Internal Audit has made seven recommendations, five medium and two considered low. All recommendations have been accepted by management and procedures are being implemented to address the issues noted.

Further points for the attention of Management are listed in Appendix III.

Appendix I: Definition of Assurance Ratings and Hierarchy of Findings

Satisfactory Assurance

Evaluation opinion: Overall there is a satisfactory system of governance, risk management and control. While there may be some residual risk identified this should not significantly impact on the achievement of system objectives.

Limited Assurance

Evaluation opinion: There are significant weaknesses within the governance, risk management and control framework which, if not addressed, could lead to the system objectives not being achieved.

Unacceptable Assurance

Evaluation opinion: The system of governance, risk management and control has failed or there is a real and substantial risk that the system will fail to meet its objectives.

Hierarchy of Findings

This audit report records only the main findings. As a guide to management and to reflect current thinking on risk management we have categorised our recommendations according to the perceived level of risk. The categories are as follows:

Priority 1: Failure to implement the recommendation is likely to result in a major failure of a key organisational objective, significant damage to the reputation of the organisation or the misuse of public funds.

Priority 2: Failure to implement the recommendation could result in the failure of an important organisational objective or could have some impact on a key organisational objective.

Priority 3: Failure to implement the recommendation could lead to an increased risk exposure.

Appendix II: Limitations and responsibilities

Limitations inherent to the internal auditor's work

We have undertaken this review subject to the limitations outlined below:

Internal control

Internal control systems, no matter how well designed and operated, are affected by inherent limitations. These include the possibility of poor judgement in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

Future Periods

Our assessment of controls is for the period specified only. Historic evaluation of effectiveness is not relevant to future periods due to the risk that:

- The design of controls may become inadequate; or
- The degree of compliance with policies and procedures may deteriorate.

Responsibilities of management and internal auditors

It is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.

We endeavour to plan our work so that we have a reasonable expectation of detecting significant control weaknesses and, if detected, we carry out additional work directed towards identification of consequent fraud or other irregularities. However, internal audit procedures alone, even when carried out with due professional care, do not guarantee that fraud will be detected.

Accordingly, our examinations as internal auditors should not be relied upon solely to disclose fraud, defalcations or other irregularities which may exist.

Appendix III: Points for the Attention of Management

Budget for Legal Services

Currently the budget for legal services is held over a number of corporate areas. The Chief Executive is the budget holder for Legal Services however the budget in respect of the Land and Property solicitor is held with the Democratic Services Manager.

It is recommended that the budget for Legal Services be consolidated and the responsibility for the management of that budget lies with the Head of Legal Services (currently the Senior Council Solicitor).

Responsible Officer & Implementation Date-

Chief Executive currently is responsible for the budget. If and when budget is transferred to Legal Services, Senior Council Solicitor would be responsible.

Checklist for Hard Copy Files

Audit selected a sample of hard copy files for verification purposes. It was noted that an opinion was obtained for all files selected. Audit recommends that paper files contain an index checklist of the contents of the file.

It is recommended that a file index checklist be developed to clearly document what is held on file for example, all files should contain a pre action protocol letter, brief to Counsel, Counsel advice etc.

Responsible Officer & Implementation Date-

Senior Council Solicitor, implementation 7th Jan 2022

Appendix IV: Summary of Key Controls Reviewed

Risk	Control issues
<p>There may be inappropriate management and oversight of legal services resources leading to issues with the quality of legal services being provided and possible non-compliance with legislation and reputational damage</p>	<ul style="list-style-type: none"> • There is clarity around the roles and responsibilities of the legal services team • There are documented policies and procedures in place to support the work of legal services • There is management oversight of the performance of the internal legal team • There are clear criteria for engaging external legal services. • An appropriate procurement exercise has resulted in an agreed list of external legal advisors. • There is SLA or clear contractual agreements in place with external legal service providers • SLAs or contracts include agreed KPIs • There is careful monitoring of external legal service providers performance against KPIs • All cases managed by external legal advisors are overseen by the Council Solicitor • SLAs or contracts with external legal service providers include a provision/clause for dealing with unsatisfactory performance • Processes are in place to manage workloads if they become excessive
<p>There may be ineffective management and oversight of legal cases resulting in inconsistencies in how cases are accepted and managed, leading to possible delays or non-compliance with legislation, and reputational damage</p>	<ul style="list-style-type: none"> • Policy and procedure(s) are in place to support case management • Appropriate criteria are used to assess the risk of each case and to assist in the decisions around prioritising and planning case management work • Reasons and decisions around allocation of cases between internal and external resources are clearly justified and recorded • A secure case management system is used to register, allocate and manage legal case work and to assist in planning workloads. • All cases have a unique case reference • Each case is assigned to a specific member of the legal team • Work plans are used to prioritise areas of work • There are agreed response times or deadlines for performing specific legal tasks especially in relation to responding to the public and keeping Council users informed of progress • There are templates/checklists available for case management activities for staff to complete when performing the activity • Cases reaching certain deadlines are automatically flagged for review

Risk	Control issues
	<ul style="list-style-type: none">• There is regular review of case work progress by the Council solicitor• Periodic reports on case management activities and open cases are created from the task management system/database and are regularly reviewed by management• SLT is regularly informed of case management progress• File management ensures tracking of file location and secure storage of legal files