

BALLYMONEY BOROUGH COUNCIL**Corporate & Central Services Meeting No 391 – 21st December 2010**

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BALLYMONEY BOROUGH COUNCIL

Minutes of Corporate & Central Services Committee Meeting No 391 in the Council Chamber, Riada House, on Tuesday 21st December 2010 at 10.00am.

IN THE CHAIR: Alderman J Simpson

PRESENT: **Aldermen**
F Campbell
H Connolly

Councillors
R Halliday
B Kennedy
M McCamphill
E Robinson

APOLOGIES: Councillor A Cavlan

IN ATTENDANCE: Chief Executive [Items 7-10]
Director of Central & Leisure Services [Items 1-6]
Head of Corporate Services [Items 7-10]
Committee Clerk

391.1 MINUTES MEETING NO 390 – 22ND NOVEMBER 2010

It was proposed by Alderman Connolly, seconded by Councillor Halliday and
AGREED:

*to recommend to Council that Minutes of Meeting No
390 – 22nd November 2010, as circulated, be approved.*

MATTERS ARISING**1.1 LG Employers Pay Briefing for NI (390.2)**

The Director advised that she attended the Local Government Employers Pay Briefing for NI on 16th December and gave the members a brief summary of discussions which took place at it.

CENTRAL SERVICES

391.2 ACCOUNTS FOR PAYMENT

Treasury advice schedules detailing payments for Period 9, 2010/11 drawn on the Council's Revenue and Capital Bank Accounts were circulated at the meeting.

IT IS RECOMMENDED that the payments are made.

* **Alderman Campbell arrived at the meeting at 10.12am**

* **Councillor Kennedy arrived at the meeting at 10.16am.**

The Director answered a number of members' queries.

It was proposed by Councillor Kennedy, seconded by Alderman Connolly and **AGREED:**

to recommend to Council that accounts to the value of £609,102.76 from the Revenue Account and £17,625.25 from the Capital Account for Period 9, 2010/11 be approved for payment.

391.3 GENERAL GRANT 2010/11

The Director advised that the Department has recalculated the de-rating element of the General Grant due to the Council using updated valuation figures at 31st October 2010. As a result the Council's allocation for 2010/11 has reduced by £7,467 to £273,533.

391.4 LOCAL GOVERNMENT PENSION SCHEME REGULATIONS (NI) 2009 – EMPLOYERS DISCRETIONS

The Director advised that under the Local Government Pension Scheme Regulations (Northern Ireland) 2009 the Council is required to compile, publish and keep under review a statement of its Policy on certain discretions which it can exercise under the Regulations. These are –

- a. to allow early retirement between 55 and 60
- b. to grant additional membership to members who leave after age 55
- c. to grant additional membership to new members
- d. to introduce a Shared Cost AVC arrangement
- e. to allow re-entry to the pension scheme for employees who have previously opted out

A draft Policy Statement which details the Council's position regarding the various discretions is attached as Appendix A. The draft policy has been considered by the Corporate Management Team, and **IT IS RECOMMENDED** for adoption by the Council.

This policy statement will replace the policy statement adopted by Council in 2003. There are no additional cost implications in this revised policy statement.

In response to queries from members, the Director clarified a number of issues in relation to discretions which Council may exercise under the Pension Scheme Regulations.

- * **Chief Executive joined the meeting at 10.50am.**
- * **Head of Corporate and Development Services joined the meeting at 10.50am.**

It was proposed by Alderman Campbell, seconded by Councillor Halliday and **AGREED:**

to recommend that Council approve the Policy Statement, attached as Appendix A, detailing the Councils position regarding the Employers Discretions within the Local Government Pension Scheme Regulations (NI) 2009.

391.5 PROPOSED CAPITAL PROJECT 2011/12

The Director advised that the following capital project is proposed for 2011/12 – Upgrade of IT Equipment – Estimated cost £30,000.00 to include –

Server replacements £5,000
 Server operating systems upgrades £5,000
 Exchange upgrades £2,500
 Canon printer replacement £10,000
 Hardware upgrades (pc & printers) £7,500

- * **Councillor Halliday left the meeting at 11.00am.**

391.6 VAT RECLAIM – LEISURE SERVICES

The Director advised that the Association of Local Government Finance Officers (ALGFO) has identified that the legislation governing the provision of leisure services by district councils in Northern Ireland (article 10(1) of the Recreation and Youth Services (Northern Ireland) Order 1986 – “the 1986 Order”) differed from that governing the provision of equivalent services elsewhere in the United Kingdom and that, as such, there was a potential opportunity to challenge HMRC as to whether output VAT should be chargeable on leisure activities.

If HMRC can be persuaded that output VAT should not be charged on leisure services activities councils would be entitled to claim a significant repayment of output VAT over-declared in the four years preceding the lodgement of the relevant claims and also savings going forward.

A full report is attached as Appendix B

IT IS RECOMMENDED that (1) Ballymoney Borough Council agrees to participate in the action to challenge HMRC in relation to whether leisure services activities should be subject to VAT

("the action");
 (2) Ballymoney Borough Council agrees to jointly (together with the other 25 district councils in Northern Ireland) appoint DLA Piper LLP & VAT Support and Solutions Ltd (with VAT Support and Solutions Ltd to be instructed by DLA Piper LLP) to pursue the action in the Tribunal in accordance with the terms of their proposal previously submitted to ALGFO – assuming a 3 day hearing at First Tier Tribunal this will involve Ballymoney Borough Council incurring professional fees of £5,000 and
 (3) Ballymoney Borough council agrees to authorise ALGFO and BCCLSD to finalise contractual arrangements between DLA Piper LLP & VAT Support and Solutions LTD and councils, including, but not limited to agreement of, letter(s) of engagement, performance monitoring and authorization of payments under the contract(s), such contract(s) to be adopted by Ballymoney Borough Council in due course.

A discussion ensued among members.

*** Councillor McCamphill arrived at the meeting at 11.29am.**

It was proposed by Councillor Kennedy, seconded by Alderman Connolly and
AGREED:

to recommend that
(1) Ballymoney Borough Council agrees to participate in the action to challenge HMRC in relation to whether leisure services activities should be subject to VAT ("the action");
(2) Ballymoney Borough Council agrees to jointly (together with the other 25 district councils in Northern Ireland) appoint DLA Piper LLP & VAT Support and Solutions Ltd (with VAT Support and Solutions Ltd to be instructed by DLA Piper LLP) to pursue the action in the Tribunal in accordance with the terms of their proposal previously submitted to ALGFO – assuming a 3 day hearing at First Tier Tribunal this will involve Ballymoney Borough Council incurring professional fees of £5,000 and
(3) Ballymoney Borough council agrees to authorise ALGFO and BCCLSD to finalise contractual arrangements between DLA Piper LLP & VAT Support and Solutions LTD and councils, including, but not limited to agreement of, letter(s) of engagement, performance monitoring and authorization of payments under the contract(s), such contract(s) to be adopted by Ballymoney Borough Council in due course.

Alderman Campbell wished to be recorded as abstaining from any decision on the above matter.

- * **Director of Central & Leisure Services left the meeting at 11.30am.**

CORPORATE SERVICES

391.7 FOOTWAYS – CLEARANCE OF SNOW AND ICE

The Chief Executive updated members on ongoing work to assist the Chamber of Commerce.

391.8 ROBERT DUNLOP MEMORIAL GARDEN

The Chief Executive updated members on progress on the sculpture project advising that the Sculpture Fund Committee had reached its target to fund the sculpture and work had been commissioned and was underway. Work has also commenced on the path to link the memorial gardens.

391.9 ROYAL BRITISH LEGION – 90TH ANNIVERSARY CELEBRATION EVENT

The Royal British Legion is holding a 90th Anniversary Celebration Event “The Official NI Great Poppy Party” on Saturday 4th June, in the Royal Ulster Agricultural Society Showgrounds, Balmoral, Belfast. There will be fun fair rides, marching bands, arena displays, vintage military vehicles, memorabilia, trade stalls, children’s activities, choral singing, Irish dancing, archery and a range of musical entertainment. Council support by way of grant funding or “in-kind” support is invited.

It was **AGREED:**

to obtain more information on the event and consider the matter and budget provision at committee’s next meeting.

391.10 TRANSITION COMMITTEE – CAUSEWAY COAST & GLENS DC

The committee met on 25th November when the Environment Minister Edwin Poots MLA attended. Addressing the meeting he gave an update on the current status of the local government reform programme and the options for the way ahead, including the preferred option. A collaboration workshop was held to identify a range of potential cluster collaboration opportunities and a further meeting was held on 9th December.

Members are reminded that a file record of the committee minutes is in the members’ room for reference.

It was proposed by Councillor Robinson, seconded by Councillor Kennedy and **AGREED:**

to recommend (i) that Council continue to collaborate with Council in RPA Cluster and the attendance of existing members of Transition Committee be approved up to election in May 2011; (ii) that minutes of the Transition Committee be table at Corporate & Central Services Committee.

Chief Executive advised that central funding for the Transition Committee had ceased, apart from the salary of the Transition Manager. A further meeting of the Transition committee was planned in January to sign off paper on proposals for collaboration for consideration by Councils.

391.11 INDUSTRIAL TRIBUNAL (CASE REF NO 02829/10/T)

The Chief Executive advised that an applicant for the post of Head of Amenities had lodged a claim for a decision. The case would be resisted in the usual way.

The meeting closed at 12.00 noon.

APPENDIX A: Draft Policy Statement - detailing Councils position regarding the Employers Discretions within the Local Government Pension Scheme Regulations (NI) 2009.

APPENDIX B: Report to each district Council in Northern Ireland seeking agreement to challenge Her Majesty's Revenue & Customs in relation to whether output VAT should be chargeable on Leisure Services activities.

Appendix A: Draft Policy Statement - detailing Councils position regarding the Employers Discretions within the Local Government Pension Scheme Regulations (NI) 2009.



**Local Government Pension Scheme (Benefits,
Membership and Contributions) Regulations 2009**

**Ballymoney Borough Councils Policy Statement on
Employer's Discretions**

January 2011

Ballymoney Borough Councils Policy Statement on Employer's Discretions

1. Introduction

- 1.1 Under Regulation 62 of the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009, the Council is required to publish and keep under review its Policy Statement on certain discretions, which it can exercise under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2009.
- 1.2 In addition the Council can exercise its discretion to contribute to a shared cost additional voluntary contribution arrangement under Regulation 21(3) of the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009.
- 1.3 In formulating its Policy Statement the Council has ensured that its discretionary powers:
 - Are exercised reasonably
 - Will not be used for ulterior motive
 - Will be used with regard to all relevant factors
 - Will be duly recorded when used
- 1.4 The Council also confirms that in applying its Policy Statement its discretions will be applied reasonably, will not be fettered and will be used as necessary to assist the Council in attracting and retaining staff and to compensate staff who leave.

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009

2. Regulation 30 – Choice of early payment of pension

- 2.1 The discretions exercised are as follows:-

Benefit	Discretion
To allow employees aged over 55 and less than 60 who request to leave to receive their benefits early	Each request from existing staff members will be judged equally on its own merits and this discretion will only be exercised on compassionate grounds in accordance with paragraph 2.3 or when the cost of funding the early retirement, calculated by the Northern Ireland Local

Benefit	Discretion
	Government Officers' Superannuation Committee, can be off set by the cost saving of release within a three-year period.
To allow former employees over age 55 and less than 60 with preserved benefits for membership after 31 January 2003 to receive early payment of their benefits.	Early payment of benefits for former employees will only be considered in exceptional circumstances on compassionate grounds in accordance with paragraph 2.3.
To waive the reduction to benefits.	Requests to waive the reduction in benefits will only be considered in exceptional circumstances on compassionate grounds in accordance with paragraph 2.3.

2.2 Each request on compassionate grounds will be considered on its own merits regardless of cost. The conditions for which compassionate grounds will be considered are:

- For the early payment of benefits under regulation 30
- For flexible retirement under regulation 18.
- To grant additional membership under regulation 12 or to award additional pension under regulation 13 for an employee leaving employment other than for reasons of redundancy or in the interests of efficiency of the service.

2.3 The main criteria the Council will consider as exceptional circumstances for compassionate grounds are to allow employees or former employees to care for a sick spouse, civil partner, co-habiting partner, parent, child, sibling or other dependant, or on grounds of severe financial hardship. Before exercising this discretion the Council will require:

- Full details of the exceptional circumstances and any supporting evidence.
- Details of all employments held since leaving the Council's employment and details of pensions deferred or in payment and any other benefits or income payable.
- Medical reports, if appropriate, to support a case of retirement to look after an elderly or infirm spouse, civil partner, co-habiting partner, child, parent, sibling or other dependant.

- Confirmation in severe financial hardship cases that the hardship would not be better assisted by the Department of Social Development and the effect the payment of scheme benefits would have on the receipt of any state benefits the member is entitled to.

3. Regulation 12 – To increase total membership of members.

- 3.1 The Council has power to increase Scheme membership for employees who are active scheme members before they leave employment and within 6 months of leaving for members who have left employment on the grounds of efficiency or redundancy. This discretion allows the Council to grant additional membership to new employees as an inducement to attract and retain them if they have specialist skills and experience required by the Council. It also enables the Council to grant additional membership to an employee at any time during active membership or when an employee is leaving employment.
- 3.2 The additional period awarded must not exceed 6½ years.
- 3.3 Additional membership cannot be awarded if the member has been paid compensation under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007 or is retiring on ill health grounds and has been awarded enhanced membership or if additional pension is awarded under Reg 13 (Additional Pension) of the Benefits Regulations.
- 3.4 The discretions exercised are as follows:-

Benefit	Discretion
Award of additional membership to employees who leave the Scheme	<p>Membership up to a maximum of 6½ years may be awarded to those leaving the Council's employment on redundancy or in the interests of efficiency in accordance with the Council's policy on Redundancy / Efficiency or on compassionate grounds in accordance with paragraph 2.3.</p> <p>Where contracts of employment are terminated on redundancy or in the interests of efficiency the number of additional years membership to be awarded (up to a maximum of 6½) will be calculated on the basis of the</p>

Benefit	Discretion
	<p>following:</p> <ol style="list-style-type: none"> 1. Additional years may only be awarded to staff who are members of the Scheme at the time when proposals for redundancies or efficiencies are made; 2. Only complete years' service (at the date of leaving) as an employee contributing to the Scheme with Ballymoney Borough Council will count as reckonable in the calculation of additional years; 3. Additional years to be awarded will be calculated on the basis that an employee will be granted one additional year for each complete year of contributing service in excess of five complete years of contributing service with Ballymoney Borough Council; 4. The maximum number of additional years that can be awarded will be 6½ years (except where an employee has previously been awarded additional years in the Scheme, in which case the maximum number of additional years will be restricted to 6½ years less any previously awarded years); 5. Scheme membership with employers other than Ballymoney Borough Council will not count as reckonable in the calculation of additional years to be awarded; 6. Any additional years purchased by an employee at any time will not count as reckonable in the calculation of additional years to be awarded.

Benefit	Discretion
Award of additional membership to Employees joining the Scheme	Membership up to a maximum of 6½ years may be awarded in rare and exceptional circumstances when it is deemed absolutely necessary as an inducement to attract and retain a new employee who has specialist skills and experience required by the Council.
Award of additional membership to Employees who are active members of the Scheme	Membership up to a maximum of 6½ years will only be awarded in rare and exceptional circumstances when it is deemed absolutely necessary as an inducement to prevent an employee who is an active member, who has exceptional specialist skills and experience required by the Council, from leaving the Council's employment.

4. Regulation 13 – Power to award additional pension.

- 4.1 The Council has power to award a member an additional pension of not more than £5,000 a year payable from the same date as the Scheme pension is payable. This discretion allows the Council to award additional pension to new employees as an inducement to attract and retain them if they have specialist skills and experience required by the Council. It also enables the Council to grant additional pension to an employee at any time during active membership or when an employee is leaving employment.
- 4.2 Additional pension cannot be awarded in addition to any compensation paid to the member under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007 or where the member is retiring on ill health grounds and has been awarded enhanced membership or if additional membership is awarded under Reg 12 (Additional Membership) of the Benefits Regulations.
- 4.3 The discretions exercised are as follows:-

Benefit	Discretion
Award of additional pension to Employees who leave the Scheme	Additional pension up to a maximum of £5,000 may be awarded to those leaving the Council's employment on redundancy or in the interests of efficiency of the service in accordance with the Council's policy on Redundancy / Efficiency or on compassionate grounds in accordance with paragraph 2.3.
Award of additional pension to Employees joining the Scheme	Additional pension up to a maximum of £5,000 may be awarded in rare and exceptional circumstances when it is deemed absolutely necessary as an inducement to attract and retain a new employee who has specialist skills and experience required by the Council.
Award of additional pension to Employees who are active members of the Scheme	Additional pension up to a maximum of £5,000 will only be awarded in rare and exceptional circumstances when it is deemed absolutely necessary as an inducement to prevent an employee who is an active member, who has exceptional specialist skills and experience required by the Council, from leaving the Council's employment.

- 4.4 Additional pension on compassionate grounds will be considered in accordance with the compassionate grounds criteria specified in paragraph 2.3.

5. Regulation 9 – Joining the Scheme for members who have opted out under regulation 10

- 5.1 The discretions exercised are as follows:-

Benefit	Discretion
To allow an employee who has opted – out of the Scheme more than once to re-join the Pension Scheme.	The Council will allow employees who have opted out of the scheme more than once to rejoin.

6. Regulation 18 –Flexible Retirement

- 6.1 The regulations allow members, with their employers' consent, who are aged 55 or over and who reduce their hours or the grade in which they are employed, to elect in writing for the early payment of their benefits without retiring. This is known as "Flexible Retirement".
- 6.2 If benefits are paid before age 65 the benefits are reduced in accordance with guidance issued by the Government Actuary. The Council may choose to waive, in whole or in part, the reductions to the benefits for the early payment. If the Council exercises this option the cost of the early payment will be borne by the Council and not the employee.
- 6.3 The discretions exercised are as follows:-

Benefit	Discretion
To allow early payment to members who are aged 55 or over and who reduce their hours or the grade in which they are employed.	The Council will allow early payment of total accrued benefits to employees meeting the terms of its Flexible Retirement Policy under paragraph 6.4.
To waive, in whole or in part, the reductions to the benefits for early payment to members who are aged 55 or over and who reduce their hours or the grade in which they are employed on Compassionate Grounds	Requests to waive the reduction in benefits will only be considered in exceptional circumstances in accordance with the criteria for compassionate grounds in paragraph 2.3.

- 6.4 The Terms of the Flexible Retirement Policy are as follows:-
- Requests from staff to be made in writing
 - Management will consider the change in hours/post on its own merits taking into account the need to deliver services effectively and efficiently, the financial implications of granting the application and the circumstances of granting each application.
 - A post will not be created to facilitate a request;
 - The post held by an employee making a flexible retirement request must be a permanent post;
 - Requests, for a current or new post, must reflect either a minimum reduction of 1 day per week (pro-rata for part-time posts) or a minimum reduction of one full grade.
 - Applicants must intend to remain in the new post for a minimum of 1 year or to age 65 if less.

- Requests to waive, in whole or in part, any reduction in pension benefits will only be considered on compassionate grounds in accordance with the criteria specified in paragraph 2.3;
 - Employees cannot agree to pay the employer strain on Fund costs. This is a cost, which must be borne by employers.
 - The total cost to Council of service delivery, including other staff costs where relevant, (except potentially in situations where compassionate grounds apply (see paragraph 2.3)) must be no greater than the cost of service delivery pre flexible retirement;
 - Employees will only be allowed one flexible retirement but one further request for flexible retirement will be considered on its own merits and based on the need to deliver services effectively and efficiently together with the financial implications of granting the application. A third request for flexible retirement will not be allowed.
 - An employee cannot flexibly retire after age 65.
- 6.5 Benefits can also be taken from the accrued AVC fund on flexible retirement.
- 6.6 Employees considering applying for flexible retirement will be given an information sheet for signature so that they clearly understand the terms and implications of flexible retirement before making a formal request for consideration. There are particular implications for those staff who could benefit from the Transitional Protection following removal of the 85-year rule:-
- The transitional 85-year rule protections for members as set out in Schedule 2 of the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 do extend to the benefits payable under the flexible retirement provisions.
 - However, following flexible retirement, the membership in respect of the benefits being drawn will not count in the continuing employment towards the 85-year rule. This will be a major issue for those members wishing to make use of flexible retirement who would have satisfied the 85 year rule before age 65 as the benefits from the continuing employment will be subject to an actuarial reduction if drawn before age 65 whereas, if the member had not taken flexible retirement, none of the benefits (when paid) would have been subject to an actuarial reduction (or, if drawn before the 85 year rule was met, would have been subject to a smaller actuarial reduction i.e. based on the shortfall to the 85 year rule being met, rather than the shortfall to age 65).

7. Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 - Regulation 21 (3) –Shared Cost AVC Arrangement

7.1 The Council is required to have in place a discretionary policy in respect of its discretion on its policy to contribute to a shared Cost Additional Voluntary contribution arrangement.

7.2 The discretion exercised is as follows:-

Benefit	Discretion
To provide a shared-cost AVC scheme.	The Council does not propose to establish a shared cost AVC scheme at this time but may review this decision at a later date when reviewing this policy.

APPENDIX B: Report to each district Council in Northern Ireland seeking agreement to challenge Her Majesty's Revenue & Customs in relation to whether output VAT should be chargeable on Leisure Services activities.

REPORT TO EACH DISTRICT COUNCIL IN NORTHERN IRELAND

**SEEKING AGREEMENT TO CHALLENGE HER MAJESTY'S REVENUE & CUSTOMS IN
RELATION TO WHETHER OUTPUT VAT SHOULD BE CHARGEABLE ON LEISURE
SERVICES ACTIVITIES**

December 2010

Background

The Association of Local Government Finance Officers (ALGFO) has identified that the legislation governing the provision of leisure services by district councils in Northern Ireland (article 10(1) of the Recreation and Youth Services (Northern Ireland) Order 1986 – "the 1986 Order") differed from that governing the provision of equivalent services elsewhere in the United Kingdom and that, as such, there was a potential opportunity to challenge HMRC as to whether output VAT should be chargeable on leisure services activities.

If HMRC can be persuaded that output VAT should not be charged on leisure services activities councils would be entitled to claim a significant repayment of output VAT over-declared in the four years preceding the lodgement of the relevant claims. It is estimated, based on returns made by councils, that, subject to ultimate HMRC approval of the income streams, local government could collectively recover approximately £14,000,000 in over-declared output VAT. Going forward, a successful resolution of the claim would result in an aggregate annual cash flow advantage to the sector of approximately £3,500,000.

Although the estimated aggregate annual amount is not equally distributed between the 26 councils it is estimated that the refund potentially recoverable by this Council is £400,000 (based on a 4-year retrospective claim) with a further £100,000 per annum accruing to the council going forward.

As the relevant legal arguments are complicated it is envisaged that HMRC will contest any such claims with the result that it will be necessary to pursue the matter in the First Tier Tax Tribunal ("the Tribunal") in the first instance (and possibly beyond depending on the outcome of the Tribunal).

Legal advices received

ALGFO commissioned the opinion of Paul Lasok, QC (Monckton Chambers, London) who, after weighing the arguments, concluded that district councils in Northern Ireland had a reasonable chance (60% chance of success) of successfully establishing that councils provide leisure services while acting as public authorities (part 1 of the 2 part argument necessary for claims to succeed). However, given the present uncertainties pertaining to what would constitute a significant distortion of competition (part 2 of the 2 part argument), Mr Lasok, QC was unable to estimate the chances of success on this point other than to indicate that this was a matter for HMRC to prove and that councils should be able to present a range of defences on this point.

Mr Lasok, QC also indicated that, based on the information available to him, it appeared that councils could also make a further alternative argument that the provision of leisure services is not an economic activity for the purposes of VAT.

Belfast City Council's Legal Services Directorate (BCCLSD) independently commissioned Brett Lockhart, QC (Bar Library, Belfast) to review Mr Lasok, QC's opinion and to consider what would likely be the most cost effective and economic method of pursuing claims.

On review, Mr Lockhart, QC concluded that Mr Lasok, QC's approach was prudent and measured and that, if councils were minded to pursue the matter, the appropriate forum was, in the first instance, the Tribunal. BCCLSD has accepted Mr Lockhart, QC's advices.

Options to pursue claims

ALGFO commissioned proposals from professional advisers DLA Piper LLP & VAT Support & Solutions Limited, KPMG (two proposals) and RSM Tenon. The proposals received may be characterised as follows:

- DLA Piper LLP & VAT Support & Solutions Ltd – capped fee proposal
- KPMG – two contingent fee proposals
- RSM Tenon – contingent capped fee proposal

As the only non contingent fee proposal, DLA Piper LLP's proposal will result in councils incurring the same level of costs regardless of the outcome of the action. However, given Mr Lasok, QC's assessment of the potential for success and the fact that two different firms of advisers have expressed an interest in representing the district councils in Northern Ireland on a contingent fee basis, ALGFO determined that councils should, in making their decision, have regard to the costs which would be payable in the event that the claims are successful.

BCCLSD has also indicated that it would be inappropriate for councils to seek to progress claims by way of contingent fee arrangements.

Endorsement from SOLACE

Having analysed the proposals and had regard to the advice received from BCCLSD in relation to the appropriateness of progressing claims by way of contingent fee arrangements, ALGFO and BCCLSD recommended at a Society of Local Authority Chief Executives (SOLACE) held on Friday, 5 November 2010 that:

1. Subject to contract finalisation (including the ultimate apportionment of the associated aggregate fee between councils), SOLACE recommend to all 26 district councils in Northern Ireland that DLA Piper LLP & VAT Support and Solutions Ltd be appointed as soon as possible on a joint basis to assist councils in challenging HMRC in relation to whether output VAT should be chargeable on leisure services and to make the necessary claims for output VAT over-declared;
2. SOLACE requests that ALGFO confirms as soon as possible an equitable method of apportioning the aggregate fee between councils and that SOLACE further recommends this apportionment method to all 26 councils; and
3. SOLACE requests that ALGFO and BCCLSD agree as soon as possible appropriate protocols for monitoring DLA Piper LLP & VAT Support and Solutions Ltd's performance over the term of the assignment and the authorisation of payments under the contract.

On consideration of the matter, SOLACE endorsed ALGFO and BCCLSD's approach and requested that ALGFO agree an equitable method of apportioning the aggregate fee between councils which would then be communicated to each council together with a recommendation to proceed. Each council would then individually consider the matter and notify ALGFO of their decision.

Recommendation to Council

The costs of pursuing the claims may be categorised as follows:

1. Professional fees payable to VAT Support & Solutions Ltd to procure assistance and support in the submission of claims to HMRC, corresponding with HMRC in relation thereto and lodging appeals to the Tribunal (capped at £1,200 plus VAT per council);
2. Professional fees payable to either DLA Piper LLP/senior Counsel to prepare and present the appeals (including identifying lead case(s), preparation of documents and witness statements, drafting technical arguments, presenting case to Tribunal, etc) (if senior Counsel is instructed cost will depend on number of days in Tribunal – estimated to be three days, i.e. £131,000 plus VAT in the aggregate; in the event that senior Counsel is not required or is required for a lesser period the figure of £131,000 will reduce proportionately); and
3. Professional and court fees associated with lodging claims for compound interest (court fees of £1,570 if lodged in High Court in London, professional fees of £600 plus VAT and court fees of £40 to holdover claims (rounded to £2,200) per council).

The professional fees (costs excluding disbursements such as photocopying, etc.) of pursuing the matter through the Tribunal (see category 2 above) have been apportioned on the basis of the amount of output VAT potentially recoverable by each council. This means that, providing each council agrees to participate in the action, each council will pay a fee which is proportionate to the amount of VAT that it will recover if the action is successful. As the other professional and court fees are arguably discretionary (at least in terms of quantum in relation to category 1 above and absolutely in relation to category 3) and are specific to each council in any event, it would be inappropriate to allocate these amounts to councils on anything other than a strict basis. However, given that the decision to lodge claims for compound interest is a matter for each council which does not have to be decided upon at this stage, these costs have been excluded from the schedule of professional fees per council which is attached at annex 1.

I would therefore recommend that:

1. Ballymoney Borough Council agrees to participate in the action to challenge HMRC in relation to whether leisure services activities should be subject to VAT ("the action");
2. Ballymoney Borough Council agrees to jointly (together with the other 25 district councils in Northern Ireland) appoint DLA Piper LLP & VAT Support and Solutions Ltd (with VAT Support and Solutions Ltd to be instructed by DLA Piper LLP) to pursue the action in the Tribunal in accordance with the terms of their proposal previously submitted to ALGFO – assuming a 3 day hearing at First Tier Tribunal this will involve Ballymoney Borough Council incurring professional fees of £5,000 and

3. Ballymoney Borough Council agrees to authorise ALGFO and BCCLSD to finalise contractual arrangements between DLA Piper LLP & VAT Support and Solutions Ltd and councils, including, but not limited to agreement of, letter(s) of engagement, performance monitoring and authorisation of payments under the contract(s), such contract(s) to be adopted by Ballymoney Borough Council in due course.

Annex 1

Analysis of professional fees payable by each council in engaging DLA Piper LLP & VAT Support & Solutions Ltd to lodge claims, etc and prepare and present appeals in the First Tier Tax Tribunal

Council	Potential VAT Recovery (based on 4 year retrospective claim) £	Professional fees (see note 1) £
Antrim	560,000	6,500
Ards	914,960	9,500
Armagh	560,000	6,500
Ballymena	560,000	6,500
Ballymoney	400,000	5,000
Banbridge	620,000	7,000
Belfast	1,200,000	12,500
Carrickfergus	396,000	5,500
Castlereagh	2,400,000	23,000
Coleraine	500,000	6,000
Cookstown	300,000	4,000
Craigavon	744,564	8,000
Derry	600,000	7,000
Down	152,000	3,000
Dungannon	169,535	3,500
Fermanagh	280,000	4,000
Larne	160,000	3,000
Limavady	320,000	4,500
Lisburn	1,022,024	10,500
Magherafelt	400,000	5,000
Moyle	200,000	3,500

Newry & Mourne	280,000	4,000
Newtownabbey	1,000,000	10,500
North Down	509,000	6,000
Omagh	265,000	4,000
Strabane	200,000	3,500
Total	14,713,083	172,000

Note 1 – Fees have been rounded to nearest £500 thereby generating a small fund of £9,800 which can be applied to fund disbursements and/or unanticipated costs