

Richard Leonard MSP

6 November 2024

Convener
Public Audit Committee
Room T3.60
The Scottish Parliament
Edinburgh
EH99 1SP

Your Ref:
061124-DSRL

Dear Convener

Further information relating to the 2022/23 audit of the Water Industry Commission for Scotland

On 2 October 2024, you wrote to me requesting further information in relation to the evidence provided during the Public Audit Committee on 19 September 2024. You have requested the following information:

- Information on previous legal advisers
- Information on WICS' 'long-standing' relationship with the KC
- Confirmation regarding the 'requirement' for senior members of staff to hold an MBA
- The date the former CEO was made aware of the section 22 report
- Whether the staff member attending the Executive Development Programme at Columbia University in 2019 was a new member of staff

I have reviewed the historical information available and respond to each request in turn below:

1. Information on previous legal advisers

WICS follows a six-year corporate planning cycle, aligned with the duration of the regulatory control period. Regulatory legal services for WICS are procured through a competitive tender process for each regulatory control period term. Shepherd and Wedderburn have been the successful bidder for regulatory legal advice the last three regulatory periods, covering 2010-15, 2015-2021 and 2021-2027.

For completeness, we hold the following information on previous legal advisors dating back to 2010 all of which were competitively tendered on Public Contracts Scotland (PCS):

1. Contract for the supply of legal advice/services awarded 20 October 2010

For the provision of legal advice/services in three areas:

WICS, First Floor, Moray House, Forthside Way, Stirling FK8 1QZ

Interim Chair: Ronnie Hinds

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- (i) the regulation and development of the current competition framework;
- (ii) strengthening and refining the current regulatory framework; and
- (iii) the operation and management of the office of the Commission.

Lots 1 and 2 were awarded to Shepherd and Wedderburn and Lot 3 was awarded to Harper MacLeod.

2. Contract for the provision of regulatory legal, economic and financial services: awarded 24 March 2015

For the provision of regulatory advice and support in connection with developing and enhancing the existing regulatory framework.

Awarded to Shepherd and Wedderburn.

3. Contract for the Provision of Human Resources and Compliance Advice: awarded 7 June 2018

Seeking the services of external professionals to ensure we remain compliant in the key areas of employment law and other legislation:

- (i) Human Resources and employment advice
- (ii) Records Management advice
- (iii) Procurement advice

Lots 1 and 3 were awarded to Harper MacLeod and lot (ii) was awarded to Information Law Solutions Ltd

4. Contract for the supply of professional services: awarded 17 August 2021

For the provision of economic, legal and regulatory advice and support in connection with the delivery of the Commission's Strategic Objectives as outlined in its Corporate Plan.

Awarded to the consortium of Oxera and Shepherd and Wedderburn.

5. Contract for the provision of records management and DPO services: awarded 5 July 2023

Awarded to TKM Consulting.

2. Information on WICS' 'long-standing' relationship with the KC

During the six years since 2018 for which we hold financial records, I can confirm the total cost of KC services was £243k. Throughout this period, WICS incurred £99,000 on KC advice to confirm WICS powers in specialist regulatory matters in both the retail non-household market and in regulating Scottish Water. The remainder of this total is made up of a £6,000 quarterly retainer which was held fixed throughout the period.

We do not hold records confirming the exact date these services were first retained prior to 2018. However, we do hold legal documents indicating that WICS has been engaging with a member of the Kings Counsel since 2005, the year it was established under the Water Services etc. (Scotland) Act 2005. The former CEO did act as the Water Industry Commissioner before 2005, but we do not hold records that confirm whether KC advice was utilised during this period.

3. Requirement for senior members of staff to hold an MBA

As highlighted in my response to the Convenor on 31 July 2024 an MBA was not a pre-requisite for individuals to be considered for senior positions but seen as desirable, particularly for more technical roles. WICS developed performance and career management guidance to support the 2017 revised grading structure. This guidance specified that senior roles—such as Head of Function, Assistant Director, and Director—would require an MBA or equivalent qualification. We are currently reviewing this framework as part of our work to review and clarify roles and responsibilities across the organisation.

4. The date the former CEO was made aware of the section 22 report

The former CEO was first made aware of the section 22 report during the Audit and Risk Committee meeting on 21st November 2023. The draft report was then issued on 6th December 2023.

5. Executive Development programme at Columbia University 2019

This was a two-week executive development training course for an existing member of staff. This training was part of the individual's professional development which was required following the promotion to a new role.

I hope this information is useful. We will continue to engage with the Committee and Audit Scotland providing any further information that may be required.

Yours sincerely

David Satti
Interim Chief Executive