

Finance and Resources Committee

10.00am Thursday 24 September 2015

Review of events in relation to ownership of Parliament House in 2005/6 – referral from the Governance Risk and Best Value Committee

Item number	7.14
Report number	
Wards	All

Executive summary

The Governance Risk and Best Value Committee on 18 June 2015 considered a report which set out the sequence of events surrounding the acquisition of legal title to Parliament House by the Scottish Government despite it apparently being an asset of the Edinburgh Common Good fund. The report has been referred to the Finance and Resources Committee to consider any future legal action.

Links

Coalition pledges	See attached report
Council outcomes	See attached report
Single Outcome Agreement	See attached report
Appendices	See attached report

Terms of Referral

Review of events in relation to ownership of Parliament House in 2005/6

Terms of referral

- 1.1 On 3 March 2015, the Governance, Risk and Best Value Committee requested a report on the events surrounding the acquisition of legal title to Parliament House by the Scottish Government despite it apparently being an asset of the Edinburgh Common Good fund.
- 1.2 A report detailing the sequence of events was discussed by the Governance, Risk and Best Value Committee on 18 June 2015.
- 1.3 The Governance, Risk and Best Value Committee agreed:
 - 1.3.1 To note the report.
 - 1.3.2 To note that there would be a forthcoming report on the Common Good Fund to the Corporate Policy and Strategy Committee which would address:
 - i. The potential for Common Good being removed from the Scheme of Delegation to Officers.
 - ii. Future reporting arrangements on the Common Good register.
 - 1.3.3 To refer the report to the Finance and Resources Committee to consider any future legal action.

For Decision/Action

- 2.1 The Finance and Resources Committee is asked to consider any future legal action.

Background reading / external references

[Governance, Risk and Best Value Committee minutes 18 June 2015](#)

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Links

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Single Outcome Agreement	See attached report
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Governance, Risk and Best Value Committee

10.00am, Thursday 18 June 2015

Review of events in relation to ownership of Parliament House in 2005/6

Item number	B1.1
Report number	
Executive/routine	
Wards	

Executive summary

On 3 March 2015, the Governance, Risk and Best Value Committee called for a report on the events surrounding the acquisition of legal title to Parliament House by the Scottish Government despite it apparently being an asset of the Edinburgh Common Good fund.

This report sets out the sequence of events in question.

Review of events in relation to ownership of Parliament House in 2005/6

Recommendations

- 1.1 It is recommended that the Committee note this report.

Background

- 2.1 It was brought to the Council's attention in late October 2013, following information becoming known to the Council's Archivist, that a third party may have gained ownership to Parliament House, which was thought by the Archivist to be an asset of the Common Good fund. Further investigation identified that Parliament House (along with the rest of the court complex between Parliament Square and the Cowgate) was the subject of a voluntary registration of title by the Scottish Government in 2005.
- 2.2 The Council archives, while not definitive, suggest that Parliament House may have been held by the Council as part of the Common Good until this voluntary registration by the Scottish Ministers.
- 2.3 By way of additional background information, it appears that the property in question is referred to by some as Parliament Hall, and by some as Parliament House. However, for the purposes of this report, by referring to Parliament House this report is referring to the building which was, until the Act of Union 1707, the meeting place for the Parliament of Scotland, and of which Parliament Hall, in essence, forms the ground floor level, with another part, known as the Laigh Hall, located beneath that. Parliament House now physically forms part of the larger complex of court buildings located at Parliament Square, adjacent to St Giles Cathedral on the Royal Mile.

Main report

Events resulting in the title of Parliament House being acquired by the Scottish Government

- 3.1 In late 2005 the Scottish Government undertook a voluntary registration of their title to the court complex between Parliament Square and the Cowgate. At the time, the Government explained that "the purpose of the voluntary registration is to settle the extent of the Scottish Ministers title which is based on many fragmented titles to the land on which Parliament House sits, including the various levels below the High Street". Title to a large number of separate parcels of land was acquired by Scottish Ministers through their predecessors. Given the

vague descriptions in these historical titles it is impossible to establish that they have a clear title to the whole area.” Such a voluntary registration exercise is not uncommon for large landowners seeking to establish clarity as to aspects of their estate.

- 3.2 As quoted above, given the nature of the title deeds on which the Scottish Government based its claim, the Land Register requested that the Government obtain consent from four organisations to the registration, as well as confirmation from those parties that they had no right, title or interest to any part of the land in respect of which the Ministers were seeking to register a title. The four organisations were the Council, Historic Scotland, the Church of Scotland and the Society of Writers to Her Majesty’s Signet. The application for registration was, in essence, placed on hold whilst this consent and confirmation was sought.
- 3.3 On 28 April 2006, the former legal services division of the Council received a letter from the Scottish Government seeking the above-mentioned consent and confirmation from the Council.
- 3.4 To allow a response to be sent on behalf of the Council, the solicitor dealing with the query sought to verify the position with the former City Development Department of the Council. The solicitor concerned duly contacted City Development on 5 May 2006 and asked them to consider the query, so that it could be responded to.
- 3.5 On 8 May 2006 the solicitor received an acknowledgement that “property research” would be asked to check whether the Council had any right or interest in the site. There are insufficient records to confirm the nature of the check undertaken but it is believed likely that it involved a member of the Estates Research (or ‘Terrier’) team within City Development checking the site against GIS (a map based system giving information on the Council’s ownership). The team may have also consulted AIS (the Council’s property management system). Neither system recorded the Council having any interest in the site.
- 3.6 Subsequently on 8 May 2006 an officer within City Development confirmed to the solicitor that the records “indicate that the Council has no interests” in the site.
- 3.7 As a consequence of this confirmation, the solicitor wrote to the Scottish Government on 9 May 2006 giving the requested consent and confirmation. The Scottish Government wrote to the Council confirming receipt of this letter on 15 May 2006.
- 3.8 Subsequent to the Council’s response (and we understand those of the other organisations written to by the Scottish Government), the Land Register of Scotland completed the Scottish Government’s registration of title over the entire site. The title to the site is registered in the Land Register of Scotland under title Number MID83631. It should be noted that this site is for the larger court complex, of which Parliament House forms part.
- 3.9 Contemporaneously with the voluntary registration of the Scottish Ministers’ title, the Ministers also conveyed part of the site to the Faculty of Advocates, being

the Laigh Hall, which as explained above is the lower level of Parliament House. It is understood this has been used by the Faculty as a library for many decades, and that there was no price paid by the Faculty for this transfer. The title to the Laigh Hall is registered in the Land Register of Scotland under Title Number MID86039.

- 3.10 It should be noted that, following a statutory reorganisation of the courts service in 2010, the Scottish Ministers' title to the site has passed to the Scottish Courts Service ("SCS"), under the Judiciary and Courts (Scotland) Act 2008. However, by way of explanation, as the title transfer has been undertaken by way of this legislative change, and not a formal conveyance of the land, the Land Register still records the Scottish Ministers as the registered owner and not the SCS. Despite this, it is the SCS that now owns it.
- 3.11 The Council officials who dealt with the matter at that time do not appear to have considered the Scottish Government's request for consent and confirmation to be unusual or to merit further investigation beyond a routine property check. Given the nature of this request, the known incompleteness of GIS and the apparent widespread understanding of the complexities of some of the title deeds in the old town, it is considered that some greater degree of verification should have been undertaken, and that the proposed response should have first been escalated to more senior officers to give them awareness. The approach taken was unfortunate, as a review of the Council archives would have revealed evidence that was suggestive (but not conclusive) that the Council may have had title to Parliament House.
- 3.12 GIS is an evolving record system and does not show all assets that the Council has title to. GIS at that time was based on the paper records held by Edinburgh Corporation prior to dissolution in 1975. The majority of charters and other historical information prior to that date was not recorded on the system but was available via the Council archives. The 'Terrier' team continues to update GIS with information provided by the Legal team, other Council Service Areas and research carried out through the Register of Sasines. They remain aware that that GIS is incomplete, particularly in connection with historic records due to the complexities of the charter based nature of titles in the old and new towns.
- 3.13 The Common Good register which is held by the Corporate Accounts section of the Finance team, did not record Parliament House as a Common Good asset. This register does not appear to have been consulted by officers at the time, but in any event a check of this would not have affected the sequence of events.
- 3.14 Whilst the approach that was taken in 2006 to verify the interest the Council may have had in Parliament House has now been shown to have been too restricted, it should also be recognised that this is a property that Council had not occupied, or contributed to the operation or maintenance of, for some significant period of time, understood to have been since the 1800s.

Common Good records

- 3.15 The report on the Council's Common Good Fund for the year ended 31 March 2005 to the Executive of the Council on 28 February 2006 was called into the Council's (former) Resource Management and Audit Scrutiny Panel on 27 April

2006. The Scrutiny Panel considered this report along with tabled papers on Common Good Funds in Scotland and Edinburgh, prepared by Mr Andy Wightman (a member of the public), in which papers Mr Wightman raised concerns over the management of the Council's Common Good Fund and its standard of record keeping. As part of this report, he identified 8 individual properties that he considered should have been recorded on the Common Good register and which were not. One of these properties was "Parliament House".

- 3.16 As a consequence of this report, the Scrutiny Panel called for a report on the development, stewardship and record keeping of the Common Good Fund. A report by the former Director of Finance to the Executive of the Council on 12 December 2006 noted an action plan which was being proposed to properly establish the circumstances of the acquisition and use of each property identified by Mr Wightman, and noted that the detailed research into this would be continued, and that a QC would be appointed to review and opine upon the same. This review involved extensive and complicated research, some of which was legal, but some of which was historical, looking at the circumstances surrounding the origin of the Council's ownership of each property, and the uses to which it had been put.
- 3.17 Following the completion of this review, the former Director of Finance reported back to the Council's Finance & Resources Committee on 29 January 2008. This report considered the Common Good more generally, including the law surrounding it and the complexity involved in correctly identifying properties as being part of the Common Good, and also specifically assessed whether or not those 8 properties identified by Mr Wightman should correctly form part of the Common Good. Those officers understood to have been primarily responsible for the assessment of those properties appear to have investigated the status of New Parliament House (otherwise known as the Old Royal High School) on Regent Road/Calton Hill, and not Parliament House (i.e. not the property which was the subject of the voluntary registration by the Government in 2005). There is no evidence to suggest this was due to anything other than confusion over the property Mr Wightman had identified because of the similarity of the names.
- 3.18 If this mistake had not taken place, then the possible interest of the Council in Parliament House might have been identified in 2006/7, although given the passage of time, it cannot be determined if this would have taken place early enough in April/May 2006 to have prevented the Scottish Ministers' request for confirmation on the title position being answered in the manner it was.
- 3.19 Mr Wightman indicates on his on-line blog that around October 2006 he became aware of the apparent confusion between these two properties, and sought to bring that to the attention of the Council. Again, it is not clear who this was highlighted to, or when. However, if this is the case, it does appear there was a further missed opportunity to identify this issue much earlier, and at a stage when it may have been easier to correct.

Discovery of the Scottish Government's Voluntary Registration

- 3.20 It was brought to the attention of a Principal Solicitor in the Council's Legal team by the City Archivist in late October 2013 that the Faculty of Advocates may have recorded a disposition to Parliament House. As referred to in paragraph 2.1 above, a professional contact of the Archivist had become aware that the Faculty of Advocates might now own Parliament House, which the contact had

believed to be part of the City's Common Good, and owned by the Council. The contact had enquired of the Archivist if this was correct, and if ownership of the property had been transferred.

- 3.21 This triggered the Principal Solicitor to probe whether this was correct. By early November 2013 the Principal Solicitor had uncovered the voluntary registration of title by the Scottish Government, and reviewed information provided by the Archivist. It was also established that, as referred to above, the letter of 9 May 2006 disclaiming interest in Parliament House may have been erroneous.
- 3.22 By the start of December 2013, records indicate this matter had been brought to the attention of the Acting Head of Corporate Property, the Head of Legal, Risk and Compliance, the Director of Corporate Governance, the Chief Executive and the Council Leader.
- 3.23 The Council's external legal advisers were also requested to search the Scottish property registers to verify if there were any land transfers which might provide an explanation for this matter, and possibly demonstrate that the Government had previously acquired title to Parliament House from the Council or some third party. This search did not disclose any such land transfers.
- 3.24 Following a review of this advice and research, and the review of further information obtained from the Registers of Scotland in connection with the 2005 voluntary registration, it was considered that an approach should be made to the Government, to raise this with them directly. The reason for this approach was that whilst there might be possible legal remedies open to the Council, to re-acquire ownership of Parliament House, further research and advice was required to establish the prospects of success. As such, and recognising the potential sensitivity, and the fact there might be information not known to the Council which meant the SCS was in fact the rightful owner of Parliament House, it was considered that a voluntary resolution was preferable.
- 3.25 On 6 June 2014, the Principal Solicitor wrote to the Scottish Government suggesting that the Council was the rightful heritable proprietor of Parliament House, that there may have been an error in the 2005 voluntary registration process and seeking a discussion on this with the Government. Subsequent correspondence followed, including with the SCS, which resulted in a meeting between Council representatives, being an officer from Corporate Property and the Principal Solicitor, and Scottish Government representatives, the latter comprising the Scottish Government's Deputy Director, Civil Law & Legal System Division, and two other Scottish Government officials, on 3 December 2014. At this meeting the Council representatives explained the Council's position, following which meeting the Scottish Government officials were to consider matters further internally and then revert to the Council. The Government officials did, however, make clear at this meeting that the SCS, and not the Government, were now the owner of Parliament House.
- 3.26 Before the Government were able to revert formally, an article on the 'loss' of Parliament House was published in the Edinburgh Evening News on 16 February 2015. This article led to this Committee's consideration of this matter at its meeting of 3 March 2015, and the request for this report.

Future Considerations

- 3.27 The law around the registration of land ownership in Scotland has been the subject of recent reform, with the coming into effect in December 2014 of the Land Registration (Scotland) Act 2012. This, together with the Government's desire that all land owned by public bodies such as the Council should be registered on the Land Register by December 2019, means there is now a requirement for the Council to assess the extent to which its land is already on the Land Register, and what actions and resources would be required to complete this process.
- 3.28 The passage of the Community Empowerment (Scotland) Bill through the Scottish Parliament will, if it becomes law, likely also impose greater statutory obligations upon the Council as regards the accuracy of its Common Good records.
- 3.29 The expectations around the registration of the Council's estate on the Land Register, and these required enhancements to record keeping, should help mitigate the risk of such an occurrence happening again in the future. It is understood these matters will be the subject of a report to the Corporate Policy and Strategy Committee.

Measures of success

- 4.1 Not applicable.

Financial impact

- 5.1 A lack of a single centralised Council record, both as to its property holdings, and also its Common Good assets, places the Council at risk of failing to comply with its statutory duties in respect of the same, including reducing its ability to achieve Best Value through the use of those holdings. However, given the complexity around the identification of some of these property holdings, and whether or not they should be categorised as part of the Common Good, the Council must balance the costs involved in a wholesale review of the same, against the benefits which would be achieved. It is understood this is a matter which will be considered by the above-mentioned forthcoming report to Corporate Policy and Strategy Committee.

Risk, policy, compliance and governance impact

6.1 The same considerations apply as under Financial Impact.

Equalities impact

7.1 None.

Sustainability impact

8.1 None.

Consultation and engagement

9.1 None.

Background reading/external references

None.

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Links

Coalition pledges

Council outcomes CO25 - The Council has efficient and effective services that deliver on objectives

Single Outcome Agreement

Appendices