

## **Cabinet – 18 March 2009**

### **Legal Services – Case Management**

**Portfolio:** Councillor J O Hare, Leader of the Council

**Service:** Legal and Constitutional Services

**Wards:** None

**Key Decision:** No

**Forward Plan:** No

#### **1. Summary of Report**

To inform cabinet members of the current informal process for briefing members on case management details with regard to sensitive legal cases and to request Cabinet to formally approve the current process.

#### **2. Recommendations**

- 2.1 That Cabinet approve the current informal process ( detailed in para 3.11) for information sharing in respect of managing and settling high profile court cases.
- 2.2 That cabinet delegates power to agree the case strategy on such cases to the Assistant Director of Legal and Constitutional Services in consultation with the Chief Executive, the Leader and Deputy of the Council or their nominees
- 2.3 That cabinet considers whether to specifically delegate power to settle such cases to the Assistant Director of Legal and Constitutional Services in consultation with the Chief Executive, the Leader and Deputy Leader of the Council or their nominees

#### **3. Background Information**

- 3.1 The Council is a large corporate entity which enters hundreds of contract each year for the supply and delivery of goods and services. It also has over 10,000 employees and as a result will from time to time be exposed to the risk of litigation, as is any other corporate entity. The risk of litigation is further increased with the requirement upon the council to undertake various legal obligations, statutory functions and to deliver various services to the public at large. From time to time,

however well intentioned the actions and decisions of the members, the organisation or its employees, things will go wrong and may result in legal claims being brought against the council.

- 3.2 In recent years the expansion of the “no win no fee” legal sector and the incorporating of legal expenses cover into most domestic insurance policies has encouraged the proliferation of such claims, particularly against those bodies that are believed to have deep pockets such as local authorities. The handling of potentially high profile legal cases against the council brings with it, its own challenges in respect of information sharing with elected members.
- 3.3 Under national legislation members of the council and the public have a right to access certain types of information held by the council. This is contained within the access to information regime relating to reports and minutes presented to different Council fora. Elected members also have a common law right to inspect council documents and to receive information to enable them to properly perform their duties. This right however is limited to a “need to know” basis and may be affected by the provisions of the Data Protection Act, Freedom of Information Act and legal professional privilege.
- 3.4 Limitations placed by those Acts is of particular relevance when considering issues raised in legal cases which may involve the disclosure of personal and or sensitive data for individuals and or commercially sensitive information. Further, due to the nature of many out of court settlements one or both parties to a claim may seek to incorporate into any agreement a confidentiality clause which will further restrict the opportunity for sharing information.
- 3.5 In performing their duties and in order to properly fulfil their responsibilities members will be exposed to voluminous quantities of information, which is disclosed by officers solely for that purpose. Members are aware that any such information must only be used by the member for the purpose for which it was provided, i.e. in connection with the proper performance of the members duties. To reinforce this common law position, all members of the council are required to undertake to abide by the code of conduct for elected members upon accepting office which states members states:-

“A member must not:

- (a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of the personal authorised to give it, or unless he is required by law to do so; nor
  - (b) prevent another person from gaining access to information to which that person is entitled by law.”
- 3.7 It is essential when the Council is planning its case strategy or attempting to achieve an economic settlement, as in contract negotiations, for such information to be kept as confidential as possible, as failure to do so may prejudice the council in being

able to affect the best possible economic settlement to the detriment to the council and thus the taxpayer to whom they owe a fiduciary duty.

- 3.8 A few years ago during the course of a number of high profile litigation cases concern was raised by elected members about the timing and the process of sharing information with Cabinet and elected members in relation to the decisions that had been taken in the case management of individual matters. Some members were of the view that, in placing precedence on maintaining the confidentiality of the councils case strategy members had been put in a position where they were being kept in the dark, notwithstanding that officers had taken case management decisions within the scheme of delegations under the council constitution approved by Council.

- 3.9 Under Table 5 of the Council's Constitution at para 40(3), the Assistant Director of Legal and Constitutional Services has a specific delegated power,

“To institute or defend on behalf of the council any legal proceedings, or to appear on behalf of the council in proceedings before the appropriate court or tribunal”. In doing so, the Interim Director of Legal and Democratic Services is authorised to take all necessary action in connection with such proceedings, including the power to settle or terminate such proceedings.”

- 3.10 The exercise of this delegated power, however, has to be tempered by the political profile and magnitude of some legal cases. In such cases, it is quite clear that there needs to be effective communication between the relevant officers and elected members. This ensures full accountability for the management of such cases and accords with the obligation on officers to consult with relevant executive members of the Cabinet and other elected members where issues that fall within an officer's delegated power have significant policy, service or operational implications, or are politically sensitive.

- 3.11 In response to the concerns raised by elected members a process and procedure in which the above delegated power was exercised was reviewed and a revised process implemented which has been used for the last two years. The current process for keeping elected members and relevant officers informed of the progress once a risk assessment has determined that a case may be high profile or politically sensitive is as follows;

The Chief Executive and relevant Executive Director for the service area concerned are informed of the case in question.

The Chief Executive informs the Leader. The Leader and Deputy Leader or their nominees take the member lead.

The Chief Executive, the Leader and Deputy Leader or their nominees are regularly briefed in writing and face to face on the material developments of the case as it progress. Their input into the case strategy is sought and also upon quantum where it is proposed an economic settlement is entered into.

- 3.12 There is an expectation by officers that the Leader and or Deputy leader or their nominees will, when they consider it expedient to do so or when they are advised by officers, will either brief cabinet and their wider political group themselves or request officers to do so (subject to managing the risk of breaches of confidentiality on the case strategy ).
- 3.13 The above informal process has been followed for the past year and has worked well, in ensuring members are briefed about sensitive cases and that officers have regard to relevant political considerations.
- 3.7 Where a case needs to be referred to Cabinet regarding a settlement, due to sensitivities it has to be recognised and that it may be necessary to call meetings between officers and elected members at short notice in order to maximise confidentiality to protect the commercial interests of the council, and sometimes due to the manner in which such cases are settled ( “on the steps of the court”). To reduce the necessity for such meetings and also overcome potential issues of quorum the Cabinet may wish to specifically delegate power on settling such cases to the Assistant Director of Legal and Constitutional Services in consultation with the Chief Executive, the Leader and Deputy Leader of the Council.

#### **4. Resource Considerations**

- 4.1 **Financial:** None arising directly from this report.
- 4.2 **Legal:** These are contained within the body of the report.
- 4.3 **Staffing:** None arising directly from this report.

#### **5. Citizen Impact**

None arising directly from this report.

#### **6. Community Safety**

None arising directly from this report.

#### **7. Environmental Impact**

None arising directly from this report.

## **8. Performance and Risk Management Issues**

- 8.1 **Risk:** Whilst a process exists for the briefing of members on such cases, the current process is an informal arrangement which lacks transparency. By approving a formal procedure it will regularise the situation and provide a more transparent leadership role for elected members in such matters and a greater degree of accountability of officers.
- 8.2 **Performance Management:** None arising directly from this report.

## **9. Equality Implications**

None arising directly from this report.

## **10. Consultation**

None.

## **Background Papers:**

None

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