

WIRRAL COUNCIL

CORPORATE SERVICES OVERVIEW AND SCRUTINY COMMITTEE – 12 JANUARY 2009

REPORT OF THE DIRECTOR OF LAW, HR AND ASSET MANAGEMENT

LEGAL SERVICE

1. **Executive Summary**

This report has been produced as a result of the request of the Chair of the Committee for a report on the funding of the Council's legal service.

2. **Background**

2.1 The Council's legal service is based within the Legal and Member Services section in the Department of Law, HR and Asset Management. The service provides advice to the council, councillors and council officers. It provides representation in court hearings and tribunals on behalf of the Council both prosecuting and defending cases.

2.2 The Department employs of 12 qualified solicitors (including the Director of Law, HR and Asset Management and the Head of Legal and Member Services). 2 of the solicitors work part time so this amounts to 10 Solicitor FTEs within the legal section itself (including the Head of Legal and Member Services). It also employs another 11 non-solicitor fee earners (10FTE) some of whom have legal qualifications as legal executives.

2.3 The section is broadly divided in to 4 teams:

Team A – this provides services in relation to the Council's planning, highways, licensing, Streetscene, environmental and trading standards functions;

Team B – this provides services in respects of contracts, employment, debt recovery and general litigation support;

Team C – this provides services in respect of the social services, education and housing functions.

Conveyancing Team – this provides services in respect of all property issues

2.3 Each team has a small amount of dedicated administrative support.

2.4 The Council's legal team is LEXCEL accredited. This is the quality standard operated by the Law Society. The Council's legal team has held this accreditation since 2003. It was last inspected in July 2008 and passed with no non-compliances. The section continues to work with departments to conduct litigation successfully in the areas of licensing, child care, anti-social behaviour, streetscene prosecutions amongst many other pieces of work. It continues to provide good quality services in the face of increasing work levels. For example the liquor licensing function was transferred to the Council from the Magistrates' Court in 2003. Many authorities increased the resources in their

legal sections to reflect this extensive new area of work. Wirral absorbed this heavy workload within its existing resources. In the area of anti-social behaviour the Wirral Anti-social Behaviour Team has increased its complement of Enforcement Officers from 4 in 2003 to 8 currently. The Council has an impressive track record in using legal proceedings to effectively tackle anti-social behaviour. This success and an increase in the capacity to investigate cases have inevitably led to an increased demand for legal action. However, there has been no equivalent increase in resources in the legal section to meet this increased demand.

- 2.5 The budget for the section is contained within the overall budget for legal and member services. The bulk of the budget is made up of staffing costs. The staffing budget for the legal section is £1.16 million. This includes the management of the section which also covers member services. There is limited benchmarking available across comparative spending by similar authorities. However, anecdotal evidence would suggest that the legal section in Wirral has comparatively fewer staff than similar authorities. The caseload of the child care litigation solicitors has historically been higher than that of other authorities and steps have been recently taken to address that through the recruitment of an additional solicitor. However, in the wake of the Baby P case that is an area which needs to be monitored closely.
- 2.6 I was recently contacted by the newly appointed Borough Solicitor for the Cheshire East authority. This is currently a shadow authority which will take over the responsibilities for the area from 1 April 2009 from the existing Districts and County Council. It will be slightly larger than Wirral in terms of its total population. He is seeking comparative information from other authorities on budget and structure. I have indicated that I would be keen to share any information to benchmark across other authorities as the current comparative information available is very limited. This will enable comparisons with other authorities to be made more easily.
- 2.7 In the past as a result of short term funding arrangements and recruitment difficulties the council has used a number of "locum" (temporary) solicitors. These placements tend to be very costly compared to permanent staff. This is due to the higher pay locums receive and the agency fees. In 2007/8 a total of £202,284 was paid for locums. The section has sought to replace locums with permanent staff and currently no locum solicitors are engaged within the service.
- 2.8 In line with most other authorities the Council's legal section is staffed to deal with the normal day to day legal activities experienced by a local authority legal department. It is necessary to externalise some areas of work which come outside of this or where there is a lack of internal capacity and/or expertise. The principal areas where this expenditure arises are;
- 1) the use of barristers; and
 - 2) the use of external solicitors on major projects.

The budget for counsels' fees for 2008/9 is £305,000. The current expenditure for 2008/9 is £228,263. The major expenditure arises from child care cases. The Council employs 3 solicitors who are principally engaged on child care cases (however, 1 of these solicitors only took up post on 5 January 2009). In addition the manager of the team conducts child care cases. Child care cases

all commence in the Family Proceedings Court which is part of the Magistrates' Court. The Council's in-house solicitors conduct all advocacy in this court. The more serious and complex cases are transferred to the County Court or in the most serious or complex cases the High Court. In respect of these more serious and complex cases which are transferred to the County Court or High Court barristers are engaged to conduct the advocacy. Although there is no benchmarking evidence available, discussions with neighbouring authorities suggests that this is common practice. As indicated above, particularly in the light of the Baby P case, it is important to ensure that legal advice and advocacy of an appropriate calibre is provided in child care cases. Barristers are also used in respect of planning inquiries, anti-social behaviour litigation and in defending judicial review applications.

In dealing with particular complex commercial transactions involving property or contracts the Council has engaged external solicitors to advise the Council. The Council is a member of the North West Consortium for Legal Services together with Sefton, Knowsley, Halton, West Lancashire and Warrington. This means that we have access to large firms with a range of expertise at rates which have been the subject of competitive tendering. As a result of the lack of in house capacity and expertise the use of external solicitors has been required on a number of key projects in recent years. The projects which are being or have been dealt with by external solicitors in the past 12 months are;

Development of Oliver Street Car Parks;
Hoylake Golf Resort Procurement;
Development of Europa Boulevard;
MIS Contract procurement
HMRI development Agreement with Lovells

The expenditure on external solicitors for 2008/9 to date amounts to £94,965. In some cases these costs have been met by other parties and not the council. This represents the actual amount incurred there are further amounts committed which means that the amount is likely to increase to the region of £150,000 by the end of the financial year. In some circumstances the Council is obliged to pay the legal costs of third parties for example the solicitors costs of individuals selling properties to the Council under the HMRI scheme. These costs are not included in this figure.

3. Financial and Staffing Implications

3.1 These are set out in detail in the body of this report.

4. Local Member Support

There are no implications for individual wards arising directly from this report.

5. Equal Opportunity Implications

There are none arising directly from this report.

6. Human Right Implications

There are none arising directly from this report.

7. **Local Agenda 21 Implications**

There are none arising directly from this report.

8 **Community Safety Implications**

There are none arising directly from this report.

9 **Planning Implications**

There are none arising directly from this report.

10 **Background Papers**

Departmental budget reports.

11. **Recommendations**

(1) That members note the report.

Bill Norman
Director of Law, HR and Asset Management