

ITEM 04

Time commenced – 18:00
Time finished – 19:15

Corporate Services Scrutiny Review Board

01 October 2020

Present: Councillor Naitta (Chair)
Councillors Stanton (Vice Chair), A Pegg, McCristal and Nawaz

In Attendance: Alex Hough – Acting Head of Democracy
Olu Idowu – Head of Legal Services

10/20 Apologies for Absence

Apologies were received from Cllr Pattison.

11/20 Late items introduced by the Chair

There were no late items.

12/20 Declarations of Interest

There were none.

13/20 Minutes of the meeting held on 23 July 2020

The minutes of the meeting held on 23 July 2020 were agreed as a correct record.

14/20 Local Authority Prosecutions

The Board received a report from the Director of Legal, Procurement and Democratic Services on Local Authority Prosecutions. This report was presented by the Head of Legal Services.

It was noted that as a public authority, the council was the enforcing regulatory body for a large number of statutory functions which the various enabling statutes created a duty or a power for it to enforce.

The Board noted that the duty or power to enforce did not automatically translate into an obligation to prosecute in every case. It was reported that as a prosecuting authority, the council was required to abide by the regulators code; a set of principles which required regulators, in every case, to be proportionate in their approach to prosecuting offenders. The Board noted that the code majored on the provision of advice and education as a means to drive up regulatory awareness and standards within society, with prosecution being regarded as a last resort measure only.

It was reported that there were a range of different factors that had to be considered prior to prosecution being deemed an appropriate measure, such as: whether the subject of enforcement had a known antecedence (for the same or other relevant criminality), whether the issue under consideration was a first offence by the subject, whether a lesser sanction such as a caution would be more appropriate, the extent to which the subject had cooperated with the authority during the investigation stage, the severity of the offence, the impact of the offence (particularly on victims) and consideration of the public interest. The Board noted that this was not an exhaustive list.

The Head of Legal Services informed the Board that the Code for Crown Prosecutors also needed to be factored in. The Board noted that this code required that for every offence being considered for prosecution, a two-part test had to be conducted in every case in order to determine whether or not it was appropriate to proceed with prosecution.

It was noted that these two tests were:

- (a) a public interest test; and
- (b) an evidential test

The Board noted that the former was usually undertaken by a lawyer in consultation with the lead client officer and effectively, was a test of merit to assess whether prosecution served the public interest, taking account of the known facts. It was reported that the latter was undertaken solely by the lawyer as a matter of professional judgment. It was noted that only if both parts of the test were met would a matter proceed to prosecution.

The Board noted that local authority prosecutions were all either summary only or either way in nature. It was reported that they did not extend to indictable offences. The Board noted that summary offences were those which could only be tried in a magistrates' court. The Head of Legal Services informed the Board that either way offences were those where one of the parties, or the magistrates', could elect for the matter to be tried either in the magistrates' or the crown court. It was reported that indictable offences could only be tried in the crown court.

The Board noted that the following regulatory provisions provided the Council with a power or duty to prosecute:

- Planning (Town & Country Planning Act 1990 and complementary legislation such as the Planning (Listed Buildings & Conservation Areas) Act 1990
- Highways (Highways Act 1980 (and complementary legislation)
- Education (school truancy)
- Environmental Protection Act 1990 (enviro-crime, statutory nuisance, etc. and complementary legislation)
- Food safety
- Council tax
- Taxi licensing
- Housing standards
- Housing fraud
- Liquor licensing
- Street trading

- Trading standards

It was noted that this was not an exhaustive list.

It was reported that criminal powers all derived from statute whereas civil rights derived from common law (e.g. land use rights such as easements and restrictive covenants), tort (e.g. negligence) or contract. The Board noted that where public authorities were concerned, failures by them in the discharge of their corporate duties could also give rise to administrative law rights which could be brought by their stakeholders, notably injunctions and judicial reviews.

The Head of Legal Services informed the Board that a key distinction in the judicial sense between criminal and civil law cases was that while in order to secure a conviction in the former, the prosecuting body needed to adduce evidence to satisfy the court of the merit of its case 'beyond reasonable doubt'. With the latter, the quality/amount of evidence need only satisfy the court 'on the balance of probabilities'. The Board noted that this distinction was known as the evidential threshold, which was set much lower for civil claims than it was for criminal matters.

It was reported that criminal matters were typically heard in the magistrates' and crown courts while civil matters were heard in the county and high courts.

A Councillor asked whether the Board could be provided with a breakdown of the volume of work the Legal team dealt with. The Head of Legal Services informed the Board that they would provide the Board with these statistics and that on average the Legal team opened around 1000 prosecution files each year. The Board noted that the council had a good success rate for prosecutions and that these statistics would also be shared with the Board.

Councillors questioned whether the Legal team had a strategic steer on which areas to focus their prosecutions on and were informed that this was not the case.

Councillors questioned whether the Legal team were able to recover costs in cases where the council were successful. The Head of Legal Services informed the Board that for civil claims, costs played a big part in whether or not it was considered 'in the public interest' to proceed with a case. The Board noted that for criminal cases the council typically put forward a costs request for £3k-3.5k and that the court would factor in the defendant's ability to pay before awarding any costs. It was noted that the council usually received costs of around £750 and that individuals were able to appeal against costs awards.

A councillor questioned why some cases that the council had won at the Magistrates Court were being overturned at the Crown Court. The Board were informed that each case needed to be viewed individually, but that a possible explanation was that Magistrates Judges were more familiar with the legislation being interpreted. It was noted that Appeals to the Crown Court were not lost by the council on the same evidence that the original case had been won on.

The Chair questioned how often the council prosecuted individuals for breaching planning permitted developments. The Head of Legal Services informed the Board that they were not aware of many prosecutions of this nature taking place,

and that this may be due to the Planning team being successful in getting compliance.

Resolved to note the information provided within the report.

15/20 Democratic Services

The Acting Head of Democracy presented the Board with an update on the functions of the council's Democracy Service and its constituent teams.

It was noted that the Democracy Service was comprised of three teams:

- Democratic Services who: administer committees, provide constitutional advice and ensure decisions are taken in accordance with statutory requirements.
- Members' and Civic Services who: provide day to day support to Councillors, Chief Officers and administer the Civic Office (the Mayor).
- School Appeals and Licensing who: manage the independent school admission appeals process and regulatory sub-committees.

It was reported that the Democratic Services team worked to ensure the timely publication of agendas, reports and minutes in accordance with statutory requirements. It was noted that most of this information was published on the council's Democracy Portal. The Board noted that members of the Democratic Services team also attended Council Committees on behalf of the Monitoring Officer to provide procedural advice.

It was noted that this team worked to maintain the Council Constitution and offered guidance to internal clients on governance and decision-making. The Acting Head of Democracy informed the Board that the Democratic Services team managed the procedure for the consideration of complaints against councillors and administered the register of councillors' interests and appointments to outside bodies and charities.

It was noted that the Democratic Services team administered hundreds of meetings per year including:

- 2018/19 – 161 public meetings
- 2019/20 – 124 public meetings & 25 cancellations
- Plus internal meetings: CLT, CJC, CHSC etc.

It was reported that the Democratic Services team had undertaken a review of the Council's Governance System that had concluded in February 2020 and were supporting the Independent Remuneration Panel with its current review of allowances.

The Board noted that this team had supported the Monitoring Officer to consider 17 complaints against councillors in the preceding three years:

- 2018 - 2019 - 4 complaints - 1 informal resolution - 3 dismissed
- 2019 - 2020 - 9 complaints - 1 informal resolution - 6 dismissed - 2 live
- 2020 - 2021 - 4 complaints - 1 dismissed - 3 live

It was noted that remote meetings had substantially changed the way the team operated. It was reported that the introduction of remote meetings had required new Remote Meeting Procedure Rules. The Board noted that remote meetings were much more resource intensive than face to face meetings.

It was noted that the Members and Civic Services team was made up of three sub teams: Executive Support (Members), Executive Support (Corporate) and the Civic Office.

It was reported that the Executive Support (Members) team carried out tasks including, but not limited to:

- Providing a range of administrative support to all councillors
- Undertaking casework and draft correspondence
- Diary management for the Leader and Cabinet Members
- Surgery bookings, Children's Home visits, attendance at conferences and seminars etc.

It was noted that over 500 pieces of councillor casework and 209 surgery bookings had been dealt with by the Executive Support (Members) team in 2020.

It was reported that the Executive Support (Corporate) team carried out tasks including, but not limited to:

- Dedicated support service for the Chief Executive and Strategic Directors – drafting correspondence, diary management, administration of internal meetings
- Co-ordinating responses to Members of Parliament and Public/Councillor questions

It was noted that 286 enquiries from MPs had been dealt with in 2020 by the Executive Support (Corporate) team.

It was reported that the Members' and Civic Services Officer carried out tasks including, but not limited to:

- Research and project work on behalf of councillors
- Administration of Members' Allowances and Expenses
- Co-ordination of Councillor and Public Questions
- Management of Civic Services register of heritage assets
- Project management of major events in civic calendar
- Co-ordinating councillor training

It was reported that the Mayoral Support Officer carried out tasks including, but not limited to:

- Management of the Mayor's diary and liaison with external customers booking the Mayor for engagements
- Management of the Mayoral Car and chauffeur attendant
- Support for key Civic events

It was reported that the Civic Office team carried out tasks including, but not limited to:

- Co-ordination of major civic events: Mayor Making, Remembrance Sunday, Freedom of the City
- Employee engagement – Here for Derby, Long Service Awards
- Community engagement – Christmas card competition, school visits, 100th birthday and golden wedding anniversaries
- Ongoing project to review internal processes and procedures
- 'Virtual Mayor's Office' in response to Covid-19 – pre-recorded messages; VE Day and Remembrance Sunday online services

The Board noted that the office of the Mayor of the City of Derby was a role that dated back to 1638 and that The Mayor had attended 237 engagements in 2019/20.

It was reported that the School Appeals and Licensing team managed independent school admission and exclusion appeals in line with the national School Admission Appeals Code. It was noted that this team was Independent of the Council as the admissions authority and offered parents a hearing in front of volunteer panellists experienced in education matters. The Board noted that this was a sold service to academies and free schools across the city. It was reported that this team also administered the Licensing Committee and regulatory sub-committees, in liaison with the Licensing department and Legal Services.

The Acting Head of Democracy informed the Board that the School Appeals and Licensing team administers hundreds of appeal hearings per year:

- 2015 – 851 appeals heard
- 2016 – 888 appeals heard
- 2017 – 1108 appeals heard
- 2018 – 1196 appeals heard
- 2019 – 837 appeals heard

It was noted that this team had contracts with 29 academies / academy trusts to administer their appeals service, as well as advising on individual cases. It was also noted that there had been substantial changes to the service as a result of Coronavirus Pandemic and that legislative changes had allowed remote hearings, but that these presented substantial practical challenges.

It was noted that the Elections team were not structured within Democratic Services, but were part of wider Legal, Procurement and Democratic Services department.

It was reported that colleagues in Democratic Services provided support to the Elections Team in the run up to polling day including:

- Management of Postal Vote processing
- Preparation and checking of ballot books and equipment for polling stations
- Planning and organization of count venue; access for candidates and agents

Councillors questioned whether Covid-19 would have a lasting impact on Democratic Services. The Acting Head of Democracy informed the Board that although the legislation allowing remote meetings was due to expire in May 2021, organisations such as ADSO were lobbying for this to be extended. The Board noted that remote meetings provided flexibility and that, in future, hybrid meetings may become the norm.

The Chair questioned whether the School Appeals and Licensing team were now back on track with school appeals after the delays caused by Covid-19. The Acting Head of Democracy informed the Board that the School Appeals and Licensing team had worked extremely hard to get on top of school appeals under very difficult circumstances and that school appeal figures would be provided to the Chair.

The Chair thanked the Independent Panel members and all colleagues in the council's Democracy Service.

Resolved to note the information provided within the presentation.

16/20 Work Programme for 2020/21 Municipal Year

The Board considered a report setting out the Work Programme for 2020/21 Municipal Year.

Resolved to note the information provided within the report.

MINUTES END