

SUBJECT: CONSISTENCY OF LEGAL ADVICE TO LICENSING SUBCOMMITTEE

LEAD OFFICER: MICHAEL PARSONS DIRECTOR OF CORPORATE SERVICES

LEAD MEMBER: CHAIR OF LICENSING COMMITTEE

KEY DECISION REFERENCE NUMBER: N/A

RECOMMENDATIONS:

Committee Notes the steps taken to ensure consistency of legal advice to Licensing Sub Committees

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

To advise Committee about the steps taken to ensure consistency of legal advice to Licensing Sub-Committees.

2. DETAILS

Merton Legal Services has received comments from residents (directly and through Members and Officers) about the consistency of legal advice being given to Licensing Sub-Committees. The concern is that the advice to Licensing Sub-committee is not consistent between lawyers. Different lawyers take different positions on the same issues leading to "inconsistent" decisions as between sub-committees.

Committee will be well aware of the volume of work, which was generated by licensing applications. This has had to be covered through the allocation and use of existing legal resources.

As no additional funding was provided by the Council for recruiting a dedicated and/or specialist lawyer a decision was taken that the legal work for Committees would be covered in-house supplemented by external advice where necessary to cover peaks of work.

As part of this decision it was also decided that only lawyers above a prescribed grade would take on this role. This was to ensure that only those lawyers already experienced in statutory interpretation would take on this role.

Two compulsory seminars were then provided to all the lawyers, which were conducted by external providers. In addition some staff asked to attend further seminars. Articles on the Licensing Act 2003 regime were scoured and circulated. We also bought two of the leading licensing textbooks – which were made available to the lawyers. The seminar notes and materials were then held together in ring binders and circulated.

As part of the preparation meetings with Licensing and Democratic Services colleagues were held and notes explained. Following the final wave of hearings a feedback meeting involving all the lawyers was held to share knowledge and suggest proposals. These meetings produced briefing papers, which were circulated.

As part of Quality Control the lead responsibility was given to a Principal Lawyer who has co-ordinated the training and learning. He also monitors case law and decisions of hearings and appeals with a view to identifying any learning issues.

Conclusion

It was almost inevitable that there would be inconsistencies of approach in a new area of law – which has a reputation for complexity. Experience and protocol has now settled most of the early uncertainties. However as each application depends on its facts it is not possible to say that an issue will always be decided in a particular way – since the lawyer only offers advice and members make the decisions.

As the number of applications have reduced and settled to a consistent number the number of lawyers advising has reduced to a core of four or five compared to the original panel of twelve. The core is now building up expertise and there is a reduced chance of inconsistencies.

3. ALTERNATIVE OPTIONS

The option of appointing a dedicated licensing lawyer was explored but not pursued as there was uncertainty about whether any additional funding was forthcoming and the inflated market would have produced ridiculous salary demands. This option still exists as the job market settled down to more realistic levels. There is the option of buying in support for hearings. This was done for some sessions and the employment of an external barrister was considered successful. However, the lack of an identified budget means that such a course would be a significant drain on existing legal resources. However this approach is not a guarantee of consistency unless the same external lawyer was engaged for all hearings which is not likely to be impossible.

4. FINANCIAL IMPLICATIONS

Continuing as we are can be contained within current budgets except that additional costs may be incurred if external advisers have to be used on a regular basis.

5. LEGAL IMPLICATIONS AND STATUTORY PROVISION

None for the purposes of this report

6. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

None for the purposes of this report

7. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

There are no health and safety implications. The risk implications have been addressed through the procedures already established

8. CONSULTATION UNDERTAKEN

None for the purposes of this report

APPENDICES – The following appendices form part of this report: None

BACKGROUND PAPERS – The papers use to compile this report were: **

** The Access to Information Act requires that ‘background papers’ which the author of a report has relied upon in the writing of a report be available for public inspection. Insert relevant details of any public document.

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