

# I. Legal Proceedings Rules

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## 1. Introduction

- 1.1 Article 14 provides that the Head or Deputy Head of Legal Practice are authorised to institute, defend, withdraw, compromise or take any other action in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Head or Deputy Head of Legal Practice considers that such action is necessary to protect the Council's interests. This includes authority to deal with claims and potential claims, authority to institute criminal proceedings as well as settlements and injunctions. This responsibility is to be discharged having regard to the following procedures and is shared, to the extent set out in these Rules, by other officers.

## 2. General

- 2.1 Except in the case of emergency or in any event where requisite instructions cannot be obtained, no proceedings shall be conducted by the Head or Deputy Head of Legal Practice, or any person on behalf of the Council, without instructions being given by, or on behalf of, a Chief Officer or Head of Service who shall have regard to the decision-making principles set out in Article 13.2.
- 2.2 The Chief Executive shall have the same powers as the Head or Deputy Head of Legal Practice to take, defend, withdraw, or compromise legal proceedings or instruct any other legally qualified and suitably experienced person to do so on behalf of the Council. The Head or Deputy Head of Legal Practice may delegate all, or any, of their powers to any Senior Lawyer or Lawyer. On behalf of the Council, the Chief Executive may nominate, under any statutory enactment in that behalf, any officers who may appear in Court or Tribunal to represent the Council, may withdraw such authorisation for any reason and shall do so in any event on respective termination of employment with the Council. The Head or Deputy Head of Legal Practice will maintain an up to date list of such nominees, including the dates of appointment and withdraw / termination.
- 2.3 Where, in the opinion of the Head or Deputy Head of Legal Practice, it is in the interests of the Council to instigate or agree arbitration or mediation, they shall have the discretion to refer any legal proceedings accordingly.
- 2.4 The Head or Deputy Head of Legal Practice shall have discretion at any time or stage of proceedings to compromise them but shall have regard to any views of the instructing Chief Officer or Head of Service and, if the claim and / or costs on any compromise, whether payable to or by the Council, is likely to exceed Level 1, they shall also consult the Chief Finance Officer.
- 2.5 The Head or Deputy Head of Legal Practice, whether acting on behalf of the Monitoring Officer or not, may and, if requested by any officer or member of the Council, shall give legal advice on any relevant matter and may procure the opinion of Counsel or, with the consent of the relevant Chief Officer or Head of

Service, brief Counsel to represent the Council in any proceedings whatsoever. The choice of Counsel shall normally be within the discretion of the Head or Deputy Head of Legal Practice, according to criteria related to experience, effectiveness, availability and cost.

### **3. Reporting**

- 3.1 In all claims except those for Council Tax or for Non-Domestic Rates, the local member(s), the Cabinet and the relevant Chief Officer where appropriate will be informed when legal proceedings have been taken by the Council, the first return date (the first day the Court has fixed for the matter to come before it – this may be only for directions, e.g., to fix a date for hearing or trial, for adjournment or for review, or in a criminal case it may be the date when a defendant attends to plead and could possibly be dealt with then), the progress of the case and the final outcome
- 3.2 The Chief Finance Officer and the relevant Head of Service and relevant members of the Cabinet shall be kept closely informed by the Head or Deputy Head of Legal Practice of any claims against the Council, whether civil or criminal, and the progress of such matters.

### **4. Compliance**

- 4.1 Where the Council is required by any Court Order, Warrant, Ombudsman decision or costs decision to pay any sum of money, do anything or not do anything, or where any claim against the Council is compromised such that any such obligation arises or crystallises, the Head or Deputy Head of Legal Practice shall ensure that the terms of the order, decision or compromise are complied with and that the Chief Finance Officer, the Cabinet and the relevant Chief Officer or Head of Service are informed. If no, or insufficient, budget is available whether directly or by virement, for discharging any monetary obligation, the Chief Finance Officer shall certify accordingly and shall arrange to discharge any sums outstanding from the reserves of the Council.

### **5. Criminal matters**

- 5.1 The Council adopts the Code for Crown Prosecutors where applicable. That is to say, in general terms, it will not take criminal proceedings unless there is clear and reliable evidence upon which there is a likelihood of conviction and it would be in the public interest to prosecute.

- 5.2 What is in the public interest will be judged from the circumstances. The Head or Deputy Head of Legal Practice, consulting with relevant Chief Officer(s) or Head of Service, will take a view based upon a number of factors. These will include the prevalence of such offences locally, the importance of the offence in the context of the local community, whether the offence is an isolated one or manifests a more careless attitude to regulation, whether there are aggravating or mitigating features, whether in all the circumstances the wider public, on whose behalf any prosecution is brought, would be likely to support any decision to prosecute and generally whether the criteria set out in Article 13.2 on decision-making have been considered.
- 5.3 All interviews with prospective defendants shall normally follow Code C under the Police and Criminal Evidence Act, 1984 and all relevant exhibits shall be properly receipted, recorded and retained until the case is finally disposed of.