



**Resources & Public Realm Scrutiny
Committee**
14 September 2021

**Report from the Director of Legal,
HR, Audit & Investigations**

Introduction to Legal Services

Wards Affected:	None
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One Appendix A – Legal Services Structure Chart
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Debra Norman Director of Legal, HR, Audit and Investigations Tel: 02089371578 Debra.norman@brent.gov.uk

1.0 Purpose of the Report

- 1.1 The Scrutiny Committee has requested a report to provide an introduction to the council's legal service, giving an overview of its work and operation and its role in the council's governance.

2.0 Recommendation(s)

- 2.1 That the committee note the contents of the report and is assured that Legal Services in Brent Council is effective in its function.

3.0 Detail

Overview of the work of Legal Services

- 3.1 The council's legal service consists of two teams made up of 6 sub-teams teams. These are the Commercial Team (Property & Planning, Contracts & Governance) and the Litigation and Dispute Resolution Team (Adults Social Care, Housing & Children's Social Care, Criminal Litigation & Licensing and Commercial Litigation). A small Practice Management Team supports the service. The service currently consists of 77 staff, although this varies from

time to time as posts in addition of the establishment are funded for special projects. A structure chart is attached as Appendix 1.

- 3.2 Between them the teams deal with all categories of legal advice and support the council requires and also provide legal support to many of the borough's schools and to the council's wholly owned companies. In addition work is occasionally carried out for other public sector bodies.
- 3.3 Over the past 4 years the service had expanded to enable it to insource work previously placed with private sector solicitors firms or which is of a type that in the past would have been so placed. In each instance a business case has been prepared to assess the viability of in-house provision and the potential financial and other benefits to the council. Support from private solicitors firms is very expensive. It is much more cost effective to undertake work in-house wherever possible, using external solicitors only for genuinely very specialist advice or in cases where, for example, the LGA are instructing solicitors on behalf of a number of local authorities including Brent.
- 3.4 The work that it has been possible to undertake in-house due to the changed approach includes property work for I4B, the reimaging local services project, complex regeneration such as in South Kilburn and complex property transactions. The service has also sought to increase the proportion of advocacy undertaken in-house in order to reduce expenditure on barristers. This is particularly the case in the Housing and Children's Social Care team.
- 3.5 Legal Services has adopted the following purpose statement:

We support the council in acting lawfully and with high standards of governance in achieving its corporate objectives for the local community.

We aim to provide a quality, comprehensive and value for money legal service to the council and our other clients, supporting them to be self-sufficient where possible and using our specialist skills and knowledge in a timely and pro-active manner where they can add most value.

- 3.6 To give an idea of the number and variety of matters the service deals with, Table 1 below sets out the total new cases opened during the 2020-21 financial year and final position at year end (Table 2). The Tables also show the position in respect of the top 10 legal worktype categories. In all the service has 96 worktypes in its case management system.

Table 1

Work type (Matter Type)	Number of New cases 2020-21
All worktypes	1311
Contracts	186
General: Prosecutions	108
Property: Lease to the council	91
Property: Leasehold acquisition	83
Debt Defended	76
Housing: Disrepair	75

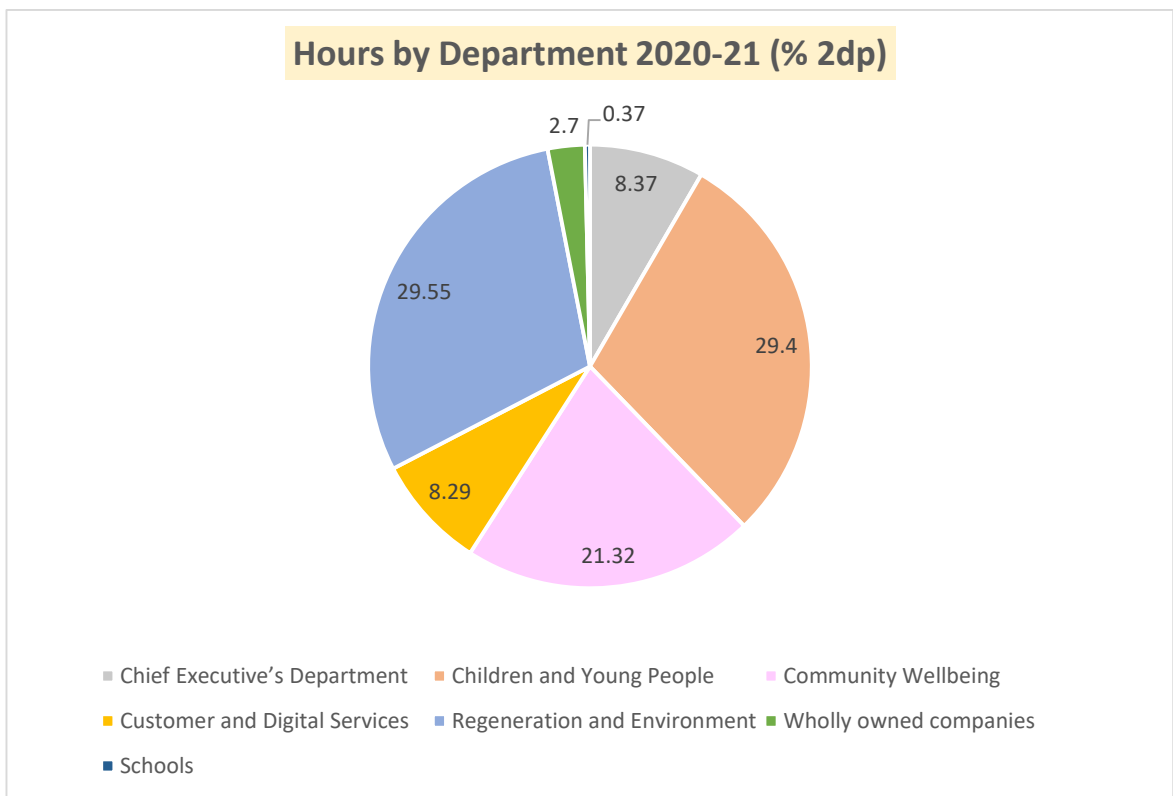
Social Services: Legal Planning Meeting	69
Social Services: Care Proceedings	53
Property: Other Property Transaction	34
Adult Social Care: Judicial Review Children	31

Table 2

Work type (Matter Type)	Open matters as at 01.04.21
All worktypes	3613
Housing: Possession - rent	471
Contracts	415
Debt Defended	375
General: Prosecutions	186
General: Advice file or miscellaneous	185
Social Services: Care Proceedings	171
Social Services: Legal Planning Meeting	115
Housing: Disrepair	111
Property: Leasehold acquisition	108
Unspecified	96

3.7 Although this will vary year on year, the proportion of the overall time spent on legal work by Legal Services by client group is as follows.

Department	% (2dp)
Chief Executive's Department	8.37
Children and Young People	29.40
Community Wellbeing	21.32
Customer and Digital Services	8.29
Regeneration and Environment	29.55
Wholly owned companies	2.70
Schools	0.37
	100



3.8 An annual customer satisfaction survey is undertaken with internal clients and a customer satisfaction questionnaire is sent out at the point each case is closed. In addition regular service level review meetings are held with senior officers and other clients in order to ensure an efficient, high quality of service is being delivered and to address any changes in demand for support or performance issues. The council's legal service is well regarded in the sector and won three awards in the 2020 Lawyers in Local Government Awards received 3 awards: winner for Legal Team of the Year and Young Solicitor of the Year and commended in the Place Team of the Year category.

Role in relation to governance and decision making

3.9 Of course all staff, in particular managers, are responsible for ensuring that laws and regulations are complied with in the work for which they are responsible and that the council's policies are implemented in practice. However, Legal Services has an important role in ensuring the council is compliant with legislation and with the council's decision-making processes. The risk register for the Assistant Chief Executive's (ACE) Directorate contains the following risk:

"The Council's Constitution sets out the broad framework within which decisions are made; failure to comply with this framework may lead to challenge of those decisions."

The register also notes that the council's Monitoring Officer has a role in ensuring the legality and probity of the council's decisions. This responsibility is delivered through Legal Services.

3.10 Legal Services and the Governance Team work closely together in ensuring that the council's decision-making process is understood and complied with. The risk register also references training provided by the Governance Team

within the ACE directorate (often with Legal Services) to ensure staff are updated on changes to the Constitution, including decision making processes. The services have worked together on extensive guidance and templates to support those seeking member level decision or key or recordable officer decision. Compliance with decision making processes and the law is also ensured by the requirement that all reports to members and member level decision making bodies to make substantive decisions, as well as all officer key decisions reports, are sent to Legal Services so that the legal implications relevant to the report can be considered and included to be taken into account by the decision maker.

Statutory and good practice governance related roles in Legal Services

3.11 The following statutory roles relating to governance are held within Legal Services:

- (i) Monitoring Officer (Director of Legal HR, Audit & Investigations (LHRAI)) - The Monitoring Officer designated in accordance with Section 5 of the Local Government and Housing Act 1989 is responsible for reporting on matters he/she believes are, or are likely to be, illegal or amount to maladministration or injustice (where the Ombudsman has carried out an investigation) and for contributing to the promotion and maintenance of high standards of conduct by Councillors. The Monitoring Officer is also the 'qualified person' for the purposes of determining whether disclosure of particular information under the Freedom of Information Act 2000 would be likely to prejudice the effective conduct of public affairs.
- (ii) Senior Information Risk Owner (Director of LHRAI) – the role of a SIRO is one expected to be established as good practice to take overall responsibility for an organisation's information risk policy at Board level.
- (iii) Senior Responsible Officer for the purposes of the Regulatory and Investigatory powers Act (Director of LHRAI) – RIPA Codes of Practice require organisations to appoint a Senior Responsible Officer responsible for overseeing the organisation RIPA related policy and practices and engaging with IPCO inspectors.
- (iv) Data protection Officer (DPO) (Senior Lawyer, Constitution and Governance) - The DPO is designated under s69 of the Data Protection Act 1988 and is responsible for informing and advising on the council's responsibilities under the Act and monitoring the council's policies and compliance.

Role in relation to the Constitution

3.12 The committee has asked in particular for information about the council's Constitution and the role of Legal Services in relation to it.

3.13 The purpose of the Constitution is to set out the fundamental principles and procedures which govern the operation of the council. All lawyers in Legal Services may be called upon to advise of the application of aspects of the Council's Constitution from time to time. For example, contract lawyers will advise on the application of contract standing orders, property lawyers may need to consider whether particular transactions fall within officer or powers or need to be referred to members for a decision and litigation lawyer may need

to advise whether a particular course of action in respect of litigation requires a member decision.

- 3.14 As the council's Monitoring Officer the Director of Legal HR, Audit and Investigations is responsible for overseeing the maintenance and operation of the council's Constitution. In this she is supported particularly by the Senior Lawyer, Constitution and Governance, and works closely with the Governance Team in the ACE Directorate.
- 3.15 The Constitution was adopted in 2002 and although changes were made to it from time to time, by 2017 it was considered to be in need of substantial updating. A fundamental review was therefore initiated overseen by the council's Constitution Working Group (CWG). This is an officer/member working group chaired by the Chief Executive on which both the Council's party groups are represented. The first report to full Council about the review was considered at the Council meeting of 18 September 2017 and a series of further reports were received. Most of the changes as a result of the review were made during 2017 and 2018, although the final element needing significant updating, the Financial Regulations and Scheme of Transfers and Virements, was approved by full Council in July this year.
- 3.16 In addition to this review, the Monitoring Officer undertakes an annual review to ensure the Constitution is up to date and changes are also made to the Constitution from time to time to reflect:
- Decisions made by the Leader as to the allocation of functions categorised as executive functions by legislation, or in a few cases by the Constitution itself (this covers most of the functions of the council);
 - Policy decisions by the council, e.g. in respect of the Council committees that should be established and the functions they should be responsible for;
 - Legislative changes or changes in guidance, for example, in respect of termination payments made to officers or in respect of CIPFA guidance about financial practices;
 - To make improvements to processes not considered to be working as well as they could, for example, a number of changes have been made to the running and content of full Council meetings.

This ensures that the Constitution is a living documents which accurately reflects current legislation and council policy and priorities.

- 3.17 Changes to the Constitution may be:
- agreed at a Full Council meeting;
 - notified to the Monitoring Officer (and by her to Full Council) where they relate to decisions by the Leader under his statutory powers as to responsibility for the discharge of executive functions and membership of the Cabinet;
 - in limited circumstances, made by the Monitoring Officer. This applies if a variation is minor or required to remove inconsistency or ambiguity or to comply with legislation.
- 3.18 Significant changes to the Constitution are considered by the CWG before being presented to full Council. The Audit & Standards Advisory Committee (ASAC) also has a role in oversight of governance of the council, including the

operation of the Constitution, in particular the Members Code of Conduct and related Codes. The Constitution includes a number of specific provisions for member involvement in reviewing of elements of the constitution, in particular:

- The Planning Code of Conduct in Part 5 is externally reviewed every 4 years. The Monitoring Officer is in the process of organising a review at the moment. This will then be considered by the ASAC before any changes needed to the Code are considered by the Council.
- The Local Code of Corporate Governance in Part 5 is reviewed as part of the annual governance statement considered by the ASAC and approved by the Audit and Standards committee.
- Full council is required to consider and adopt a new Members Allowances Scheme in Part 6 before each financial year.

4.0 Financial Implications

4.1 The purpose of the funding is to provide an overview of the legal services and assurance to the Scrutiny committee of its function.

4.2 There are no direct financial implications from this report.

5.0 Legal Implications

5.1 These are included in the body of the report.

6.0 Equality Implications

6.1 Under Section 149 of the Equality Act 2010, the council has a duty when exercising their functions to have 'due regard' to the need to eliminate discrimination and other conduct prohibited under the Act and advance equality of opportunity and foster good relations between those who share a "protected characteristic" and those who do not. This is the public sector equality duty. The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The purpose of the duty is to enquire into whether a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision.

6.2 No equalities implications arise directly from this report.

7.0 Consultation with Ward Members and Stakeholders

7.1 None

8.0 Human Resources/Property Implications (if appropriate)

8.1 None

Report sign off:

Debra Norman

Director of Legal, HR, Audit &
Investigations.