

## **REPORT TO EXECUTIVE**

Date of Meeting: 8 February 2022

## **REPORT TO COUNCIL**

Date of Meeting: 22 February 2022

Report of: Director Corporate Services

Title: Authorisation of Legal Services Officers to attend the Magistrates' and County Courts and changes to the Scheme of Delegation for Legal Services.

### **Is this a Key Decision?**

No

### **Is this an Executive or Council Function?**

Executive (item 1) and Council (item 2)

#### **1. What is the report about?**

This report concerns authorisation of certain legal officers to represent the Council before the County Court and Magistrates' and the County Court.

#### **2. Recommendations:**

That the Executive approve:-

(1) That Danny Damarell be authorised to represent Exeter City Council in the Magistrates' and County Court in accordance with sections 222 and 223 Local Government Act 1972 and section 60 of the County Courts Act 1984.

That the Executive recommend and that Council approve:-

(2) the Council's Scheme of Delegation be amended to give delegated authority to the Service Lead, Legal Services, to authorise legal officers to represent Exeter City Council in the Magistrates' and County Court in accordance with sections 222 and 223 of the Local Government Act 1972 and section 60 of the County Courts Act 1984.

#### **3. Reasons for the recommendation:**

3.1 To provide for the legal officer referred to in this report to be authorised to represent Exeter City Council before the Magistrates' Court and County Court in accordance with sections 222 and 223 of the Local Government Act 1972 and section 60 of the County Courts Act 1984.

3.2 To provide that future decisions concerning authorisation of legal officers to appear before the courts are delegated to the Service Lead Legal Services.

#### **4. What are the resource implications including non financial resources?**

4.1 There are no resource implications as a result of these recommendations.

## **5. Section 151 Officer comments:**

5.1 There are no financial implications for Council to consider contained within this report.

## **6. What are the legal aspects?**

6.1 As members will note in the report details below:

(1) Section 222 of the Local Government Act 1972 provides for local authorities to prosecute or defend or to appear in any legal proceedings, and to institute civil proceedings in its own name, as well as being able to make representations in the interests of its inhabitants at any public inquiry;

(2) Section 223 of the Local Government Act 1972 provides for local authorities to authorise Local Authority Officers to prosecute or defend on behalf of the Council or to appear on the Council's behalf in in the Magistrates' Court; and

(3) Section 60 of the County Courts Act 1984 provides for local authorities to authorise Local Authority Officers to exercise the right of audience in actions brought by the local authority for either or both of the following:

- (a) The recovery of possession of a house belonging to the authority;
- (b) The recovery of any rent, mesne profits, damages or other sum claimed by the authority in respect of occupation by any person of such a house.

## **7. Monitoring Officer's comments:**

This report raises no issues for the Monitoring Officer.

## **8. Report details:**

The law provides for Local Government Officers who are not solicitors or barristers to be authorised by the Local Authority to appear in the County Court and the Magistrates' Court on behalf of the Council.

8.1 Section 222 of the Local Government Act 1972 provides for local authorities to prosecute or defend or to appear in any legal proceedings, and to institute civil proceedings in its own name, as well as being able to make representations in the interests of its inhabitants at any public inquiry;

8.2 Section 223 of the Local Government Act 1972 provides for local authorities to authorise Local Authority Officers to prosecute or defend on behalf of the Council, or to appear on the Council's behalf in, proceedings before the Magistrates' Court.

8.3 Section 60 of the County Courts Act 1984 provides for local authorities to authorise Local Authority Officers to exercise the right of audience in actions brought by the local authority for either or both of the following:

- The recovery of possession of a house belonging to the authority; and
- The recovery of any rent, mesne profits, damages or other sum claimed by the authority in respect of occupation by any person of such a house.

8.4 Danny Damarell is a Legal Executive and has been appointed as Team Lead Housing and Litigation within Legal Services. In his role, Mr Damarell will be attending the County Court on a regular basis to deal with housing litigation and will also attend the Magistrates' Court in relation to prosecutions and other matters dealt with in the Magistrates' court.

8.5 The powers to grant authorisation for Council officers to appear before the Courts in accordance with sections 222 and 223 of the Local Government Act 1972 and section 60 of the County Courts Act 1984 are widely used by local authorities. The granting of authority for legal officers will add to the Council's capacity to appear before the County and Magistrates' courts.

8.6 The activities of Legal Officers are carried out under the supervision of the Service Lead Legal Services.

8.7 In order to support the work of Legal Services, Danny Damarell requires authorisation in accordance with the statutory provisions.

## **9. How does the decision contribute to the Council's Corporate Plan?**

9.1 Legal Services supports the delivery of all aspects of the Council's corporate plan through its legal support of Council departments and Council activities. The authorisation of Legal Officers as requested in this report will contribute to the delivery of the Council's Corporate Plan.

## **10. What risks are there and how can they be reduced?**

10.1 This report does not raise any risks to the Council.

## **11. Equality Act 2010 (The Act)**

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because the report is limited to the delivery of legal services and does not have an impact on people with protected characteristics.

## **12. Carbon Footprint (Environmental) Implications:**

12.1 Approval of these recommendations will have no direct carbon/environmental impacts.

## **13. Are there any other options?**

Failure to agree to the proposals will undermine the delivery of legal services to the Council.

**Director Corporate Services, Baan Al-Khafaji**

Author: Simon Copper Service Lead Legal Services.

## **Local Government (Access to Information) Act 1972 (as amended)**

Background papers used in compiling this report:-

None

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