

## **SCRUTINY COMMITTEE - ECONOMY – 8 MARCH 2012**

### **QUESTIONS FOR PORTFOLIO HOLDER** **UNDER STANDING ORDER NO.20**

#### **Questions from Cllr Mrs Thompson for the Portfolio Holder – Sustainable Development and Transport**

In relation to the City Council obtaining specialist advice from Leading Counsel, regarding Civil Parking Enforcement matters please may I ask the Portfolio Holder to assist in my request to obtain the following:-

1. A copy of the instructions to Leading Counsel regarding the specialist legal advice sought?
2. A copy of Leading Counsel's report in response to the legal advice sought?
3. In relation to the total number of penalty tickets issued in the 'former Pinn Lane layby' please are you able to confirm the total number of refunds made to drivers following the successful appeal (and agreement by DCC to make the refunds) and how many remain outstanding.

#### **Reply**

*Councillor Sutton replied to Questions 1 and 2 stating that following consultation with officers, the legal advice is that both the instructions and Counsel's report are legally privileged documents and as such the contents are not able to be disclosed. Neither she nor the Leader had sight of the documents.*

*Councillor Sutton replied to Question 3 and advised that Exeter City Council had received three requests for a refund in relation to Penalty Charge Notices issued in the Pinn Lane lay-by, and all three requests had been refunded. Two Penalty Charge Notices issued were also being processed at the time of the outcome of the adjudication relating to Mr Pascoe and they were automatically cancelled.*

Councillor Mrs. Thompson commented on the reply, and asked a supplementary question. She remained concerned that she was unable to see a copy of Counsel's advice, and as a Member of the Scrutiny Committee, she should be seen as the client, and should be in a position to know what instructions and advice had been given. She was aware that a total of 38 Penalty Charge Notices had been issued, and that Devon County Council had agreed to refund all those individuals.

She requested an explanation as to why only three tickets had been refunded, particularly as following the agreement by Devon County Council to pay back those individuals, she had been advised that those individuals who had received a Penalty Charge Notice in Pinn Lane would be refunded.

*Councillor Sutton asked the Litigation Solicitor, who was in attendance at the meeting to provide legal comment in respect of the legally privileged information contained in Counsel's advice. The Litigation Solicitor stated that Counsel's advice was sought for the client, who in this case was the Council as a corporate body, rather than the constituent parts of the Council, such as individual Members and officers. There was not an automatic assumption that such advice would be available to Members and officers generally. The Litigations Solicitor cited the*

*provisions of s.100F(1) and (2), and Schedule 12A Paragraph 5 of the Local Government Act 1972. Documents are not required to be open to inspection by any Member of the Council where the documents disclose exempt information. In this instance, Counsel's advice constituted exempt information as it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. Accordingly this was a limiting factor. Of course, it was important for officers to brief Members, which was why a report had been made available to Members to summarise the position in light of the advice from Counsel.*

*Councillor Sutton replied that the City Council had received no further request for a refund other than those three Penalty Charge Notices she had referred to in her earlier reply. The City Council act as agents for Devon County Council on matters of on-street enforcement and their instructions were that if an individual made themselves known, or the Council had their details, a refund would be issued. Those instructions have been followed and there are no outstanding requests for refunds in the system.*