

**HAMPSHIRE COUNTY COUNCIL****Decision Report**

<b>Decision Maker:</b>	Executive Member for Policy and Resources
<b>Date of Decision:</b>	9 June 2011
<b>Decision Title:</b>	Trading Standards Service – Authority to Institute and Appear in Legal Proceedings
<b>Decision Reference:</b>	2924
<b>Report From:</b>	Director of Culture, Communities and Business Services

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## **1. Executive Summary**

1.1. The purpose of this report is to gain approval to the arrangements for the institution of, and appearance in legal proceedings in Trading Standards and Community Safety cases of the Director of Culture, Communities and Business Services, which are managed by the Legal and Compliance Team of the Trading Standards Service.

1.2. This report seeks to:

- set out the background to the ability of officers within the County Council to institute legal proceedings on behalf of the authority, with particular reference to officers within the Trading Standards Service.
- consider any financial implications upon the authority as a result of this decision
- highlight the impact of the decision on the ability of the Trading Standards Service to prosecute criminal offences.

## **2. Contextual information – Current Position**

2.1. Under Paragraph 14.3 of the County Council's Constitution, the Head of Legal Services is authorised to commence, defend or participate in, any legal proceedings in any case, where necessary, to give effect to decisions of the Council, or in any case where the Head of Legal Services considers it necessary to protect the Council's interests. This authorisation was previously given to the Head of Corporate and Legal Services, until April 2009, when it was reassigned following the retirement of the post holder.

2.2. This broad delegated authority generally forms the basis on which the County Council becomes involved in legal proceedings, through decisions by the Head of Legal Services and staff authorised by him to act on his behalf.

- 2.3. The Trading Standards Service and the Community Safety Service were, prior to 1 April 2011, part of Regulatory Services, although they are now separate services acting within the Communities section of the Culture, Communities and Business Services department. They do, however, maintain shared facilities in that they are both based at Montgomery House and assist each other in operational areas of joint activity.
- 2.4. Trading Standards is responsible for the enforcement of a range of legislation in respect of trading standards and consumer protection. This requires specialist expertise on the part of a group of professional officers who are highly trained and experienced in this particular field. Community Safety is responsible for the enforcement of a range of legislation with regards to anti-social behaviour; some of which will be an associated effect of breaches of law enforced by the Trading Standards Service.
- 2.5. For some years, therefore, the practice has been for suitably experienced and qualified officers within the Trading Standards Service to be authorised to institute proceedings in, and appear before, the Magistrates' Court in connection with cases brought under legislation which is enforced by either the Trading Standards Service or the Community Safety Service. This arrangement was subject to Member review in 1996, when the Public Protection Committee confirmed that authority to commence and appear in such proceedings was granted to *"the Director of Property, Business and Regulatory Services, and such officers from Regulatory Services as he shall appoint for the purpose"*.
- 2.6. Following adoption of the County Council's Constitution in 2001, approval was sought for this issue at the Executive Member for Policy and Resources Decision Day on 23 July 2009, when it was confirmed that *"the Director of Property, Business and Regulatory Services, and such officers within Regulatory Services as she shall appoint for the purpose, be authorised to prosecute, defend and appear on the County Council's behalf in, legal proceedings before a magistrates' court relating to Regulatory Services, and to sign any relevant legal document in connection therewith"*.
- 2.7. It is always of assistance for prosecuting officers to have with them in Court an up to date record of their authorisation from the Council's Executive Member. In doing so, it is also helpful to clarify that there is no conflict between the authorisation of a particular group of staff, to institute and appear in proceedings in a specific area of service activity, and the more general authorisation referred to at paragraph 2.1 above. Following the merger between Culture, Communities and Rural Affairs (CCRA) and Property, Business, Regulatory and IT Services (PBR&IT), however, it is not clear what transitional arrangements are in place for such authorisations which were in place prior to 1 April 2011. With this in mind, and for the avoidance of doubt it is felt prudent to confirm the Executive Member for Policy and Resources decision of 23 July 2009.
- 2.8. The scope of this authorisation is felt to be appropriate, as it is consistent with that agreed previously, and seeks to clarify and confirm the position following the merger of CCRA and PBR&IT.

**3. Finance**

- 3.1. There is no financial impact associated with this decision as it merely seeks to confirm an existing arrangement.

**4. Impact on Performance**

- 4.1. This decision will clarify that, following the merger between CCRA and PBR&IT into Culture, Communities and Business Services, all appropriately authorised officers within the Trading Standards Service will remain authorised to prosecute, defend and appear on the County Council's behalf with regards to legal proceedings in a Magistrates' Court.

**5. Recommendation**

- 5.1. That the Director of Culture, Communities and Business Services, and such officers within the Trading Standards Service as will be appointed for the purpose, be authorised to prosecute, defend and appear on the County Council's behalf in legal proceedings before a Magistrates' Court relating to matters concerning both the Trading Standards and Community Safety Services, and to sign any relevant legal document in connection therewith.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	Yes
Corporate Business plan link number (if appropriate):	
<b>Maximising well-being:</b>	Yes
Corporate Business plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	No
Corporate Business plan link number (if appropriate):	

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Regulatory Services – Authority to institute and appear in legal proceedings	822	23.07.2009

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

- 1.1. An Equalities Impact Assessment has been completed in the development of this report and no adverse impact has been identified.

### **2. Impact on Crime and Disorder:**

- 2.1. The County Council has a legal obligation under Section 17 of the Crime and Disorder Act 1998 to consider the impact of all the decisions it makes on the prevention of crime and disorder in the County. The proposals in this report have no impact on the prevention of crime. Efficient arrangements have been made for decision making facilitates effective enforcement of legislation.

### **3. Climate Change:**

- 3.1. The proposals will not have a direct impact on our carbon footprint and energy consumption.