

## **Report to the Cabinet**

**Report reference:** C-091-2008/09  
**Date of meeting:** 2 February 2009



**Portfolio:** Corporate Support and ICT Services.  
**Subject:** Continued Use of Counsel - Compliance with Contract Standing Orders.  
**Responsible Officer:** Graeme Oakley (01992 564012).  
**Democratic Services Officer:** Gary Woodhall (01992 564470).

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### **Recommendations:**

- (1) That the report of the Director of Corporate Support Services in accordance with Contract Standing Order C1 (10) be noted: and**
- (2) That, in relation to the current financial year, Contract Standing Order C3 be waived in respect of Richard Banwell of Counsel, enabling the Director of Corporate Support Services to continue to instruct him on behalf of this Council in relation to cases in which he has current or previous involvement for the reasons set out in Paragraphs 5 and 6 of this report.**

### **Executive Summary:**

The report seeks to waive Contract Standing Orders to allow the use of Richard Banwell of Counsel to be instructed for the remainder of the financial year for reasons of continuity of advice and value for money.

### **Reasons for Proposed Decision:**

The waiver of CSOs will facilitate the effective use of the Legal Service's Consultant's budget in 2008/09, with value for money having been demonstrated by an earlier competitive quotation process. It will also allow continuity of advice and representation.

### **Other Options for Action:**

To instruct an alternative Counsel -consideration has been given to this, but there is a risk that it would be both disruptive and more expensive as work will, to some extent, be unnecessarily duplicated.

### **Report:**

1. In June 2008 summonses were issued against the owner of land adjacent to 62 Hoe Lane Abridge for the removal of hedges in contravention of the Hedgerow Regulations 1997.
2. Two quotations were sought and Richard Banwell was instructed to advise and conduct the trial on behalf of the Council.
3. The trial was fixed for 24 November 2008 but by lunchtime on that date it became

clear that it would not conclude that day. In the interests of justice, the trial was abandoned and a new hearing has been fixed for March 2009. This will mean that the Council will incur unexpected further costs for Counsel, although if successful in the prosecution, the Council will seek an order that the Council's costs are paid by the Defendant.

4. Furthermore, since issuing the summonses, other matters have arisen in respect of the same land.

(a) Notice has been served under Section 215 of the Town and Country Planning Act 1990 requiring that building materials brought onto the land be removed as they adversely affect the amenity of the area. An appeal has been made against the Notice to the Magistrates Court which may result in a lengthy trial dealing with legal submissions as to the nature of the materials, whether they are waste and whether the owner of the land has rights to deposit the materials on the land as part of an authority he holds from the Environment Agency; and

(b) Planning Enforcement Notice and Stop Notice has been served requiring the removal of a roadway/ access way from the land. An appeal has also been lodged against this notice.

5. The owner of the land is using the same Counsel in respect of all the above matters and it is the professional view of both legal and planning officers that it is in the Council's best interests for Counsel Richard Banwell to also advise and represent the Council. This is in terms of continuity of advice and value for money.

6. On a separate case, it was recently necessary to issue urgent Injunction proceedings in the High Court in respect of a gypsy travellers' site at The Meadows Bumbles Green Nazeing followed by a number of hearings. From the list of approved Counsel maintained as part of the Council's Lexcel accreditation, Richard Banwell was the only appropriate Counsel available at short notice to advise and attend at the High Court in respect of that matter.

7. Fees currently paid or committed to this counsel are approx. £24,000.

8. Contract Standing order C1(10) states:

*“ Where the aggregate sum payable within a single service directorate to one supplier of goods, works or services in a financial year is likely to exceed the limits of authority referred to in these Contract Standing orders, the Chief Officer must report to the Cabinet and seek a waiver of the Standing Order. It is the responsibility of the Chief Officer to ensure that such a report is submitted prior to the limit of authority being breached. In exercising their responsibilities under this paragraph, Chief Officers should have regard to the overall cost (including any management costs) of any contracts which extend over longer than a single financial year.”*

9. Accordingly, authority is sought to waive Contract Standing Order C3, which requires two quotations to be obtained for services in the value range of £15,001 to £25,000 for the reasons set out in paragraph (5) above.

#### **Resource Implications:**

Within existing Budgetary Provision.

#### **Legal and Governance Implications:**

Compliance with the Council's Standing Orders, including waiving them when appropriate, is

a demonstration of Governance arrangements operating effectively.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

None.

**Background Papers:**

None.

**Impact Assessments:**

*Risk Assessment* - There is a risk that changing Counsel to deal with different aspects of the same matter could detrimentally impact on the Council's ability to put its case effectively.

*Equality Assessments* - There are no identified Human Rights/ Equality issues arising from this report.