



Cheltenham Borough Council

Public Interest Report

The Council's decision
making process for the
High Court action against its
former Managing Director

2 March 2010

2008/09 Audit

KPMG LLP (UK)

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Summary report

Introduction

1. We are the external auditors appointed by the Audit Commission to audit the accounts of Cheltenham Borough Council (the Council). This report is issued in the public interest under section 8 of the Audit Commission Act 1998 (the 1998 Act). This section of the 1998 Act requires us to consider whether, in the public interest, we should make a report on any significant matter coming to our attention to bring it to the notice of the audited body and the public. We are making this report in the public interest because of the scale of the financial costs involved, the number of recommendations being made and the level of interest being expressed by the public.
2. This report is to be dealt with in accordance with section 10 of the 1998 Act, which in part requires our report to be considered by the Council at a public meeting. The report also includes a recommendation under section 11 of the 1998 Act, which the Council must consider and decide what action it will take in response within one month of receipt of the report.

Background

3. In August 2005, the Council terminated its contract of employment with its former Managing Director, Christine Laird (through a mechanism known as frustration of contract). Mrs Laird had started in this role in February 2002, having worked previously for Rhondda Cynon Taf Council (RCT Council). Shortly after Mrs Laird joined the Council, there was a local election which led to a change of political administration. Almost immediately there were signs of a strained relationship between Mrs Laird and a number of leading Members in the new administration.
4. There then followed a period of significant turmoil in the organisation during which there were a number of drawn out and significant disputes and grievances between Mrs Laird and the Council, and between Mrs Laird and certain Members and officers of the Council. This was well documented at the time. This protracted process continued for over three years, with the Council finally terminating Mrs Laird's contract of employment in August 2005. In March 2006, the Council agreed to Mrs Laird's ill-health early retirement with effect from August 2005. The costs associated with handling and resolving these disputes were substantial, at £307,000, as was the cost of Mrs Laird's ill-health retirement.
5. Following this, the Council came to the conclusion that there had been flaws in Mrs Laird's application for the post of Managing Director. The Council decided that it had a fiduciary duty to try to reclaim the costs it had incurred. Accordingly, in May 2007 it initiated legal action against both Mrs Laird and her previous employers, RCT Council.

6. The action against RCT Council was dropped in November 2008, with each side agreeing to bear their own costs. The Council continued with its claim against Mrs Laird, which amounted to £982,000, and this was considered by the High Court between January and April 2009. The High Court judgement recognised it to be a "novel case". The Court judgement, issued in June 2009, was that the Council's claim failed and the case was dismissed. The Court judgement sets out the facts surrounding Mrs Laird's employment and the termination of her contract in considerable detail, and the basis of the conclusions reached by the Judge. We are not dealing in detail in this report with the matters covered by the Court judgement.
7. The Court instructed the Council to pay Mrs Laird a proportion of her costs, which have yet to be quantified. The Council has estimated that this will cost £550,000, of which a payment on account of £150,000 has been paid in 2009/10. This comes on top of the Council's own costs of £495,000 in bringing the claim, a figure which continued to grow as the Council defended an unsuccessful appeal by Mrs Laird against the costs award. Overall, the Council has therefore incurred total costs of £1,045,000 to date as a result of deciding to pursue this legal action. This issue has also absorbed a significant amount of officer and Member time throughout its lifespan. Looking over the whole period of the Council's disputes with Mrs Laird, the Council has incurred total costs of approximately £2,132,000 (see paragraph 35).
8. As a result of this financial loss and the level of public interest in how this situation arose, we agreed with the Council that we would carry out a thorough review of the decision making process followed by the Council. Our principal objective throughout this review was to consider whether the Council followed appropriate processes in deciding initially to take, and continuing to pursue, the High Court action against Mrs Laird. We developed and agreed with the Council a number of specific lines of enquiry, which are summarised in Appendix 1. Our focus has been on identifying the key learning points for the Council and other local authorities.
9. We also received formal objections on the same issue from local electors requesting that we consider issuing a report in the public interest under section 8 of the 1998 Act and representations from Laurence Robertson MP. The specific issues were incorporated into the review process.
10. In conducting our review, we have had full access to documents and information held by the Council including legal advice, minutes and reports that the Council has deemed exempt from publication. In disclosing these documents to KPMG, the Council has not waived its right to claim legal privilege to those documents and this remains a matter for the Council to consider.
11. The remainder of this report summarises the key conclusions from our review.

Overall conclusions

12. Organisations set up governance systems of structures, processes and controls to run their business and to deal with issues. Because of the Council's history with Mrs Laird, the High Court action it brought against her became a unique issue with significant risks and implications. This put too much stress into the Council's governance system, and structures, processes and controls failed. There was no single issue or failing, rather there were a series of issues that taken together over time created the situation. The Council did not recognise this as events were unfolding and did not respond effectively or early enough.
13. Our specific conclusions, which are discussed throughout this report, are that:
 - the Council incurred significant expenditure and management time in pursuing a claim for damages against its former Managing Director and her previous employers;
 - there was a lack of clarity in the Council's constitution over who should make decisions about this significant legal case, and in practice the decision-makers changed during the process;
 - there were flaws in the decision-making process whereby decisions were made with an over-emphasis on legal matters, some potentially crucial decisions were not addressed and others were made too late;
 - the Council did not manage this as a corporate issue, despite its financial and reputational significance, and while it focused on developing a legal case it did not apply wider project and risk management processes; and
 - the Council took some understandable precautions in the way it managed the Committee process but these had the unintended consequences of limiting the opportunities for Members to be fully informed and involved.
14. It is not unreasonable for a council to go to court to seek recovery of a substantial financial loss. The Council had incurred significant costs as a result of the employment dispute with Mrs Laird and it was appropriate to consider options for recovering its losses. Members from all political groups and officers felt that they had a fiduciary responsibility to the local tax payer to pursue a legal claim for damages. The Council had also obtained external legal advice indicating that it had a good chance of winning the court case. Many officers and Members still feel that in principle the Council did the right thing in taking its claim for damages to the Court. The Judge recorded that it was "clearly a claim fit for trial".

15. If all aspects of the decision making process had worked properly then it is possible that the Council would still have chosen to go to court. There were key stages throughout the process where different decisions could have been taken, but it is impossible to know whether any of these would have led to a different outcome. Choosing to go to court will always bring with it an element of uncertainty — of risk. Even when organisations understand the risks they face, and take informed decisions, sometimes the outcome will not be what the organisation desired.
16. This has been a long case and the Council has made some improvements to its governance arrangements during this period. It is unlikely that the Council will have to deal with an issue of this nature and magnitude very frequently. However, there are some clear lessons to be learned from the process that was followed that have a bearing on how future decisions are made for significant issues and projects. It is important that the Council considers what changes it needs to make as a result.
17. Part of the legacy of this dispute is that it continues to absorb time, energy, attention and money. The Council needs to move on and we encourage Members of all political groups and officers to put the turmoil behind them, and build positive working relationships that will benefit the people of Cheltenham.

Recommendations

18. We have made 26 recommendations to the Council which are set out throughout this report and are summarised in Appendix 2. We are also making the following recommendation under section 11 of the 1998 Act.

Recommendation under section 11 of the Audit Commission Act 1998

Consider and respond to the detailed recommendations included in this report.

Next steps

19. As this is a report in the public interest, there are formal legal requirements with which the Council must comply:
 - it must consider the report at a Council meeting, within one month of its receipt;
 - it should publicise, in advance, the Council meeting and the reason for it;
 - at that meeting it must decide whether our section 11 recommendation is to be accepted and what action to take; and
 - it should then publicise after the meeting the decisions taken.
20. The Council must also make the report available to members of the public and publicise the subject matter of the report and its availability to members of the public.
21. The Council's Chief Executive, Andrew North, has set out his response to this report in Appendix 3.
22. We would like to express our thanks to Members and officers of Cheltenham Borough Council for the positive way in which they have co-operated and assisted with this review, and also to members of the public and others who have raised concerns with us and contributed views and information.

Ian Pennington
Director
For and on behalf of KPMG LLP, Appointed Auditors
2 March 2010

Detailed report

The Council incurred significant expenditure and management time in pursuing a claim for damages against its former Managing Director and her previous employers.

Mrs Laird's employment and subsequent dispute with Cheltenham Borough Council

23. Mrs Laird was appointed as the Council's Managing Director in January 2002 and started in this role in February 2002, having worked previously for RCT Council. In May that year, there was a local election which led to a change of political administration. Almost immediately there were signs of a strained relationship between Mrs Laird and a number of leading Members under the new administration.
24. There then followed a period of significant turmoil in the organisation during which there were a number of drawn out and significant disputes and grievances between Mrs Laird and the Council, and between Mrs Laird and certain Members and officers of the Council. This was well documented at the time. The Council delegated authority for overseeing the dispute with Mrs Laird to its Staff & Support Services Committee (S&SSC). The S&SSC is a cross-party committee of the Council, including senior Members, with responsibilities covering employment and constitutional matters. During this period, the S&SSC received regular briefings from officers, notably the Head of Human Resources, the Borough Solicitor and the Section 151 Officer (the Council's senior financial officer), regarding the progress on dealing with the dispute.
25. This protracted process continued for over three years, with the Council finally terminating Mrs Laird's contract of employment (through a mechanism known as frustration of contract) in August 2005. In March 2006, the Council agreed to Mrs Laird's ill-health early retirement with effect from August 2005. The costs associated with handling and resolving these disputes were substantial, at £307,000, as was the cost of Mrs Laird's ill-health retirement.
26. We have not examined the details of the employment dispute as this was properly dealt with by the High Court.

The development of the Council's claim for damages against Mrs Laird and RCT Council

27. In the latter stages of the employment dispute with Mrs Laird, the Council recognised that in view of the considerable costs it had incurred in dealing with the matter, it should consider its options for possible legal recourse against third parties. Following Mrs Laird's departure, the Council came to the conclusion that there had been flaws in her application for the post of Managing Director and that there were reservations about the reference provided by RCT Council. The Council therefore decided that it had a fiduciary duty to try to reclaim the costs it had incurred from RCT Council and Mrs Laird.
28. The S&SSC wished to explore the viability of legal action arising from Mrs Laird's job application, so the first formal stages were taken in June 2006 in order to access certain key documents from RCT Council, and also Gloucestershire Occupational Health (which had provided the medical assessment during Mrs Laird's recruitment). The Borough Solicitor updated the S&SSC about this action later that month.

29. In order to determine whether there was sufficient evidence to support claims against RCT Council and Mrs Laird, it was necessary first to review the documents which were obtained from RCT Council and Gloucestershire Occupational Health, following a successful application to the Court to require their disclosure. The Council obtained a view on the new information from an expert barrister (counsel). The Borough Solicitor then reported to the S&SSC in September 2006 in order to brief them about the potential viability of a claim against RCT Council and Mrs Laird based on Mrs Laird's job application. Although there was no explicit vote, the S&SSC confirmed its intention that the legal action should be progressed. This was not actioned immediately and following further consideration, which included consultation between the Borough Solicitor, the Chief Executive and the Leader of Council, the Council issued a joint claim for damages against both parties in May 2007. The Borough Solicitor reported to the S&SSC in June 2007 confirming that the proceedings had been issued in line with the discussions at the September 2006 S&SSC meeting.
30. There then followed a long period where the Council's legal team continued the development of the claim for damages against RCT Council and Mrs Laird. The S&SSC received periodic briefings during this time but these were not comprehensive, reflecting the slow pace of progress.

The High Court claim against Mrs Laird

31. In October 2008 there was an exchange of evidence between the various legal teams. Following consideration of this information, and having taken external legal advice, the Council dropped the action against RCT Council in November 2008. Each party agreed to cover its own costs. The Council continued with its claim against Mrs Laird, which amounted to £982,000.
32. In January 2009 officers tabled a detailed paper to the S&SSC setting out the Council's options. The S&SSC decided to continue with the claim but also authorised the Chief Executive to explore the potential for settlement, whereby he was to agree any terms proposed for settlement after consultation with Group Leaders (or appropriate Group representatives), the Chief Finance Officer and the Head of Legal Services. Consultation with all of these individuals over the possibility and quantum of settlement had commenced in the weeks leading up to the January 2009 S&SSC meeting and this continued in the days afterwards. Building on this earlier process, the details of the Council's initial offer were agreed with the Group Leaders of the two largest political groups. The Chief Executive was unable to speak to the representative of the third political group at this point, but already had clear indications in writing of that individual's views on this matter. Mrs Laird rejected the Council's settlement proposals, however, and while the Council did informally explore whether there was the possibility of further negotiation on this matter, the terms discussed were still not acceptable to Mrs Laird, and there was no counter-offer from Mrs Laird's legal team.

33. This effectively ended the discussions over a possible settlement and the Council therefore proceeded with its claim against Mrs Laird, which was considered by the High Court between January and April 2009. The Court judgement, issued in June 2009, was that the Council's claim failed and the case was dismissed.

The costs incurred by the Council

34. The Court instructed the Council to pay Mrs Laird a proportion of her costs, which have yet to be quantified. The Council has estimated that this will cost £550,000, of which a payment on account of £150,000 has been paid in 2009/10. This comes on top of the Council's own costs of £495,000 in bringing the claim, a figure which continued to grow as the Council defended an unsuccessful appeal by Mrs Laird against the costs award. Overall, the Council has therefore incurred total costs of £1,045,000 to date as a result of deciding to pursue this legal action. This is summarised below. This issue has also absorbed a significant amount of officer and Member time throughout its lifespan.
35. Looking over the whole period of the Council's disputes with Mrs Laird, the Council has incurred total costs of approximately £2,132,000, comprising:
- £307,000 of external costs on dealing with the earlier grievances and disputes with Mrs Laird (total costs were £412,000, but £105,000 was recovered from Mrs Laird between 2004/05 and 2006/07);
 - £450,000 to fund Mrs Laird's ill-health early retirement, paid to the Gloucestershire local government pension fund;
 - £495,000 of direct expenditure in taking the High Court action against Mrs Laird and, initially, RCT Council (see Table opposite);
 - an estimated £550,000 to pay for a proportion of Mrs Laird's own legal costs in defending the High Court action (the final figure has not yet been determined); and
 - £330,000, which is the Council's latest estimate of the costs of officer time in managing both the employment disputes and for staff directly involved in developing the High Court legal case (see Table opposite).

Costs incurred by Cheltenham Borough Council through taking the High Court legal action

Details	2007/08 and before	2008/09	2009/10 to date	Total to date
	£000	£000	£000	£000
External legal advice from Counsel – High Court case	24	320	51	395
External legal advice from Counsel – appeal (to date)	–	–	7	7
Other external advisors	1	20	–	21
Expert witnesses	–	–	12	12
Court fees	2	3	–	5
Transport, accommodation and subsistence	–	20	2	22
Other miscellaneous costs	2	18	13	33
Total costs incurred to date	29	381	85	495
Estimated Council share of Mrs Laird’s costs	–	–	550	550
Total external costs	29	381	635	1,045
Council’s estimated cost of officer time				330
Total costs				1,375

36. The following time-line summarises the key events and decisions relating to the Council’s decision making process leading up to the High Court case.

Minority political administration



● Key events and decisions

There was a lack of clarity in the Council's constitution over who should make decisions about this significant legal case, and in practice the decision-makers changed during the process.

The role of the Borough Solicitor

37. The Council's constitution allows the Borough Solicitor (who is also designated as the Council's Monitoring Officer), full Council, Cabinet and committees of Council all to make decisions on legal actions. This therefore presented a range of options over who could influence the direction the Council followed and, ultimately, who would exercise authority to make crucial decisions.
38. A new Borough Solicitor joined the Council in July 2005 and took over the role of leading the Council's legal support regarding possible legal action against Mrs Laird and RCT Council. He attended his first meeting of the S&SSC that month where he explained that, while he had authority under the constitution to make decisions, he would seek the endorsement of the S&SSC before taking any significant steps in any litigation.
39. In effect, this meant that the Borough Solicitor would seek the S&SSC's views on the Council's objectives and the legal strategy to be followed, and obtain Members' endorsement of significant proposed decisions and actions, and would then take relevant operational decisions to progress the Council's potential claim for damages. This approach was felt to be understood and accepted by officers, and the S&SSC, to whom the Borough Solicitor would report on progress and decisions. In practice, however, there was a degree of ambiguity over who was 'making decisions'. The Borough Solicitor was clear on the extent of his decision-making authority and that he was simply delivering the clear mandate given to him by the S&SSC, whereas some officers and Members had interpreted the situation to mean that the Borough Solicitor was driving the process.
40. The employment dispute with Mrs Laird had been a long and drawn out affair involving a range of different legal actions and procedures which had absorbed a significant amount of Member and officer time at senior levels. Members and officers were disappointed that Mrs Laird had been successful in her claim for a full pension, including a lump sum, amounting to a significant cost to the Council. This galvanised the resolve of Members from across party groups to seek legal redress against Mrs Laird in order to recover some of these losses. It is on this basis that the S&SSC requested that the Borough Solicitor explore the possibility of legal redress against Mrs Laird and RCT Council. However, long-serving Members were fatigued at the end of the employment dispute and when it came to the possibility of a claim for damages were happy to allow the legal team to 'get on with it' in terms of the progressing the claim. New Members, elected since Mrs Laird's departure, may have been less able to question the decision-making process. It became an officer-led process as a result, albeit with officers believing they had been given a clear mandate from Members.

41. It is common for local authorities' constitutions to delegate authority to officers to exercise a wide range of decisions without the requirement for a formal decision from Members. This typically includes delegation to an equivalent post to the Borough Solicitor for initiating and progressing legal action on behalf of the authority, where that officer is also the most senior lawyer in the authority. The constitutional intention here is practically to ensure that any such action is led by the appropriate officer for legal matters, rather than to place significant decision making power with one officer. The exempt minutes of the July 2005 S&SSC meeting show that the Borough Solicitor explained to Members the extent of his decision-making authority over the Laird dispute and clarified that this was to enable him to progress matters effectively and respond to new developments in a timely manner, rather than to allow him to take decisions independently of Members on significant matters such as those surrounding the Council's objectives and the legal strategy to be followed, which were matters for the S&SSC to decide.
42. In practice, Members endorsed the initial decision to pursue a claim for damages against RCT Council and Mrs Laird, after which the Borough Solicitor was then making all the operational decisions. He did so through a process of consultation with the S&SSC to provide them opportunities to endorse or reject proposed courses of action, although at times Members were simply updated on decisions that had been required in between S&SSC meetings. However, as noted above there was a degree of confusion over the Borough Solicitor's decision-making role, with Members believing that the Borough Solicitor was effectively making all decisions and simply briefing them on the process. Despite this ambiguity, the Borough Solicitor's actions were consistent with the spirit and requirements of the Council's constitution.
43. Apart from the authority to commence legal proceedings, it is important to address the issue of financial authority. The Section 151 Officer was consulted regarding the financial aspects of the on-going and proposed proceedings and advised the S&SSC on these aspects. Under the Council's scheme of delegation the Borough Solicitor had authority to issue court proceedings in the name of the Council without any financial limits in place. Good governance would suggest that where expenditure becomes sufficiently significant, as it did in this case, a sensible control would be to require a more senior person or body to formally approve further expenditure above a certain threshold.
44. The Council's Section 151 officer did confirm throughout that costs would be funded from General Fund Reserves and this was reported to the S&SSC, although it appears that the S&SSC only noted this situation rather than authorising the likely scale of expenditure that was to come. Costs were also reported in summary to the S&SSC on a reasonably regular basis. The issue of higher financial authority was, therefore, only addressed indirectly.

Recommendations

- R1. Review the constitution to make clear what the Borough Solicitor can and cannot do regarding decisions to instigate and continue legal action, whether financial limits should apply to the Borough Solicitor's delegated authority, and when and from whom further sanction is required for financial expenditure above that limit.
- R2. Review the constitution for other potential instances where authority is delegated to individuals without clarity over the extent of their financial authority.
- R3. Ensure that where there are alternative people or bodies who could take a lead decision making role, that all options are evaluated and the conclusion is documented clearly.

The role of Members

- 45. Many local authorities have a committee equivalent to the S&SSC whose terms of reference includes staffing matters, such as the appointment of statutory officers and other senior positions, and constitutional matters. Such committees are not designed to deal with a significant legal case, although they are sometimes used for this purpose and it is sensible to designate a smaller group of Members to take this oversight role rather than using full Council.
- 46. The Council delegated responsibility for matters in relation to Mrs Laird's contract of employment to the S&SSC in 2003, when she was still an employee, in recognition of the need for cross-party involvement in the oversight of the dispute. This arrangement rolled on when the dispute changed to become a High Court claim. The Council did not recognise that the issue it was managing had changed from an employment dispute to litigation for the recovery of damages. Indeed, even up to the January 2009 S&SSC meeting — the last meeting before the High Court case commenced — the committee agenda was still referring to "an employment matter" when in reality it had become a legal matter. It was expedient for the S&SSC to continue in its oversight role, but no one questioned at the time whether it remained appropriate for the S&SSC, with its terms of reference centred on internal staffing matters, to continue with this role, rather than to refer the matter to Cabinet or establishing an alternative arrangement.
- 47. The delegation to the S&SSC effectively removed the Cabinet, Scrutiny and full Council from the equation. Any of these bodies could have taken the initiative to review the case but did not do so. There was some limited consultation with Group Leaders at times, but relevant Cabinet leads whose portfolios included finance and legal services were not briefed.

48. The S&SSC's initial consultative role was partly intended to remove potential party political or individual Member bias from decision making. However, in reality S&SSC remained a political forum.
49. The Council has certain procedural and notification requirements affecting 'key decisions' made by the Executive (i.e. Cabinet), but these requirements do not apply to other committees such as S&SSC. However, despite the significance of the legal case, which was known from the outset, the Council did not consider whether the same principles should apply in this instance, even when the question was asked by certain Members towards the end of the process.

Recommendations

- R4. Review the need for, and remit of, the S&SSC and other committees.
In a Cabinet/Scrutiny model, a Council may only need regulatory committees (Licensing, Audit, Planning). Mixing decisions between Cabinet and S&SSC can be confusing. It may be possible for many operational matters to be delegated to the officers and the Chief Executive as head of paid service, perhaps supported by ad hoc Member Panels or other fora for advisory purposes.
- R5. Review constitutionally whether 'key decisions' made by committees should be subject to similar procedural and notification requirements as those made by Cabinet.
- R6. When important constitutional questions are raised, then the Council should take care to answer the precise question and also to look further at the underlying implications.
- R7. Where decisions are made by committees or officers, ensure there is sufficient briefing of, and involvement from, the relevant Cabinet leads at appropriate stages.

Impact of the length of time involved

50. The legal case took a number of years to build and in this time there were changes in political leadership, membership of the S&SSC and a change in Borough Solicitor:
 - between the termination of Mrs Laird's contract of employment in August 2005 and the start of the High Court hearing in January 2009 there were two changes to the political group in control (as minority administrations), as a result of the Council having elections every two years;
 - the resultant changes to the elected Members affected both the membership of S&SSC and who was chairing the committee; and

- in the same period the Borough Solicitor changed. The Borough Solicitor commenced the process and issued the claim for damages against Mrs Laird and RCT Council in May 2007. The Borough Solicitor left the employment of the Council in February 2008 and the Council then designated its Head of Legal Services as its Interim Borough Solicitor with effect from 1 March 2008.
51. There was also a further late change to those involved in leading the process, when the settlement negotiations in January 2009 were delegated to the Chief Executive, who was told to consult with Group Leaders.
 52. These changes did not assist the maintenance of clear and consistent roles and decision making arrangements. There were differences in the way the two Borough Solicitors approached decision making. Shortly before the Court hearing, the Interim Borough Solicitor clearly passed responsibility for decision making to the S&SSC, whereas the approach of his predecessor had been more characterised by consultations with Members to inform and endorse decisions. This meant that the S&SSC made decisions in the November 2008 and January 2009 meetings — indeed, in January 2009 there were no officer recommendations in the detailed paper presented to the S&SSC (although there was a recommendation in the separate paper from the Section 151 Officer, dealing only with financial implications). This was in part down to personal style, with the Interim Borough Solicitor taking a more cautious approach and seeking to transfer responsibility fully to Members. It was also influenced by the complexity of the proceedings at that stage, with the Council having more information available about the likely conduct and duration of the court case and officers being more aware of the risks involved. The Interim Borough Solicitor therefore wanted to ensure Members were fully involved in any decision over the final direction to take in light of this information. .
 53. This change does seem to have caused some confusion. Members had different understandings about whether they or the Borough Solicitor were now actually making decisions. Some felt that the S&SSC made the final decisions prior to going to court. Others felt they were simply expressing views to inform the decisions that the Interim Borough Solicitor would ultimately make.
 54. On a more general front, the politically balanced nature of Cheltenham, together with the frequency of elections, led to a number of changes of administration throughout the period of this dispute. The prospect of another election due within two years of a change means that it will be difficult for any party or coalition to expect a period of stability in which to manage a coherent programme. There is a risk, more generally, that this becomes an obstacle to improvement. There were changes to the membership of the S&SSC during the period of the case, although there is no evidence that this situation had a significant influence on the outcome of the decision making process. In light of this, we have not made a specific recommendation on this matter, but we believe there is merit in the Council reviewing the current two-yearly election arrangements and assessing whether the people of Cheltenham would be better served by a different arrangement.

There were flaws in the decision-making process whereby decisions were made with an over-emphasis on legal matters, some potentially crucial decisions were not addressed and others were made too late.

Objectives and option appraisal

55. There was a clear consensus across officers and Members about the Council's original objective in taking legal action, which was to follow the fiduciary duty of recovering money.
56. In seeking to achieve any given objective, there are usually a number of different strategies which can be followed. However, the Council did not set out and appraise the range of options open to it to deliver its objective, either initially or at most key stages in the process. Having considered external legal advice on the prospects of success, the Council then focused on building a legal case to go to court. There was an early decision by the S&SSC to undertake a viability study to consider what options were open to the Council, but this study was never undertaken. Officers and Members are unable to explain why.
57. The report to the January 2009 S&SSC meeting was the first comprehensive assessment which considered a range of possible options. This took place just days before the High Court hearing commenced so at this stage the Council could only consider limited options regarding its next steps.
58. There was also no exit strategy. This is in part because of the absence of an initial option appraisal. Because the Council never undertook this initial analysis, it did not benefit from knowing what alternative strategies it could employ, either in response to changing risks or circumstances or because of any reassessment of the Council's objective. As stated above, the Council was simply building a legal case as its only option and there was no questioning of whether this remained the appropriate strategy.
59. By the time the potential maximum costs exceeded the Council's risk appetite it was effectively too late (as discussed further below under 'Settlement'). Options other than going to court were not actively considered until too late, at which point they were no longer viable alternatives.

Recommendations

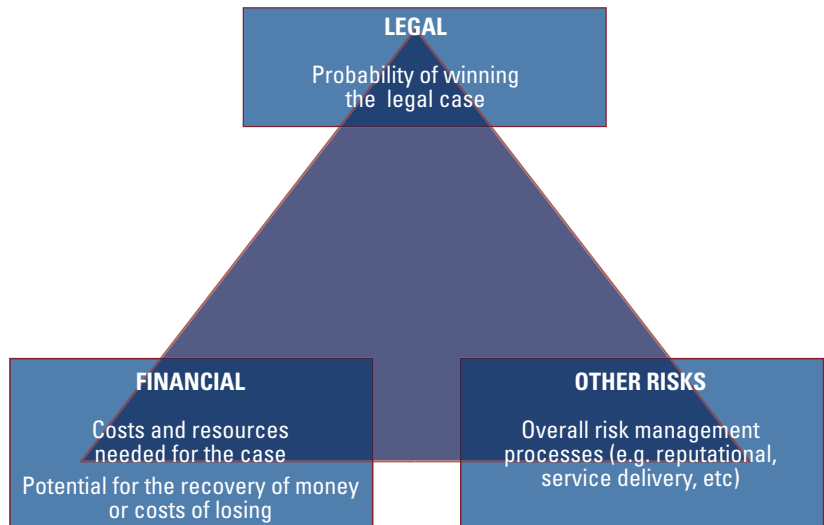
- R8. Review the process for taking forward, and reporting back on, decisions made by committees to ensure agreed actions are delivered (or explanations provided as to why they are not).
- R9. Ensure that all relevant options are assessed when considering crucial decisions.
- R10. Options should be reassessed throughout decision processes. This includes revisiting the overall objective and ensuring that the strategy being followed remains appropriate for delivering the objective. The Council needs to remain flexible, and be prepared to change objectives, options and decisions on a timely basis if information changes.

Professional advice

- 60. Throughout the long dispute, both during Mrs Laird’s employment and afterwards, the Council took appropriate external legal advice. The Council always had appropriate regard to this advice, including ensuring that appropriate details were reported to the S&SSC in support of, or to inform, crucial decisions.

- 61. Specialised legal advice falls into the external expert category of the Council’s procurement rules. This means that the Council would decide which barrister to hire based on the detailed expertise in the individual’s CV. We are satisfied that the Council followed an appropriate process. Between 2006/07 and the current financial year, 2009/10, the Council has spent approximately £400,000 on external legal advice alone.

- 62. There was, however, too much emphasis on the assessed chances of success of the legal case without taking proper account of financial, reputational and other risk issues. Reports to, and minutes of, the S&SSC meetings throughout the process demonstrate that the Council did consider other factors, but not with sufficient weight. For example, financial matters were often considered but in the context of briefing Members on recent costs and possible further costs, rather than outlining the Council’s best case scenario (the ‘up-side’), the total financial exposure of pursuing the legal case (the ‘down-side’) and the most likely outcome. In essence, the usual balance of a decision ‘triangle’ (see an example below) was lost with too much weight given to legal matters.



63. The emphasis on the legal merits of the case occurred, at least in part, because of the prominent role that was given to the Borough Solicitor and the absence of a more balanced, corporate leadership of the 'project'. It meant that sufficient focus on assessing the possible costs against benefits, and also the chances of recovering any damages and costs that may have been awarded, did not happen until too late.
64. The Council acted throughout as if it expected to win and this influenced its decisions. Throughout the development of the case the Council received consistent advice that its prospects of winning were 60:40 in its favour. It was consistently told it had "a strong case". This clear message, combined with other factors, furthered the Council's resolve to pursue the case. It did not, however, give sufficient attention to the flip-side of the legal advice; that there was a 40 percent chance it would lose.
65. It is also true that the detailed legal advice from Counsel set out all the necessary and expected caveats about the uncertainties surrounding a legal case such as this one. This was therefore clear to, and understood by, officers and Members. However, the quantified element of the external legal advice regarding the chances of success at court also became 'quotable' and was a significant factor in the decisions that were taken. Indeed, at one point Counsel's advice was modified slightly to 62:38 in the Council's favour. This fine-tuning of the assessed prospects of success was done for valid, illustrative reasons but became spurious accuracy in such a subjective arena. The apparent precision of the assessment only served to reinforce the general view that the Council would win.

Recommendations

- R11. The Council should, in all instances, take decisions based on a balanced range of success factors including service needs, legal issues, financial implications and risk. Decisions should be informed by appropriate risk scenarios or possible outcomes.
- R12. Before starting legal proceedings that are likely to incur significant costs, estimate the potential risks and costs and revisit this analysis throughout the process, and certainly whenever there is a sea change in the case.

Crucial decision points

66. The Council missed opportunities actively to take or re-affirm decisions, which amounted by default to 'decisions to continue'. There were critical decisions and non-decisions in the early stages of the case that may have limited the Council's options in the weeks immediately preceding the court case. For example, as commented on further below, the lack of a full risk assessment and option appraisal at the outset meant that the possibility of settlement was not actively considered until late in the proceedings.
67. As stated above, the Council did not revisit its objective or strategy during the process, to ensure they remained appropriate. In particular, it did not do so at the 'crossroads' where crucial decisions were made or were not addressed.
68. Perhaps the first opportunity was prior to the Council issuing claims against RCT Council and Mrs Laird in May 2007. There was no briefing to S&SSC immediately beforehand, even though the case documentation must have been largely complete.
69. The S&SSC took an informed decision to drop the claim against RCT Council at its November 2008 meeting, although Members were not provided with a written paper and instead were briefed verbally, albeit relatively comprehensively. This was the first instance when a possible change of direction was considered, nearly one and half years after the claim for damages was issued.
70. There was not, however, enough emphasis in November 2008 on discussing whether or not to continue with the case against Mrs Laird at this meeting, although this was considered. The Council was, however, aware that Mrs Laird was asserting that she did not have sufficient resources to meet any award in the Council's favour. When the RCT Council 'safety net', as a corporate body with insurers, was removed, the Council did not consider fully the implications of pursuing just one party, and one without the protective cover of insurance. It was only at the end of the process that the Council considered sufficiently the prospects of recoverability of any award in its favour.

Recommendation

- R13. The Council should recognise that not taking an explicit decision (e.g. use of "The Committee notes") can amount to a positive decision to continue with the existing course of action. In sensitive or important issues, officers should carefully draft recommendations so that it is clear what will happen as a result.

Committee processes

71. With the exception of the last S&SSC meeting before going to court, the Council did not apply its usual processes when bringing matters to Members. The January 2009 meeting was the only one benefiting from a comprehensive paper setting out the risks and financial implications of the available options, but even then there was no recommendation from officers, other than through a separate paper from the Section 151 officer which considered financial risks alone. The Council had a clearer understanding of the possible costs by this point, but this does not explain why comprehensive option appraisals and risk assessments were not prepared before.

Recommendation

- R14. The Council should apply its usual governance processes to all decisions brought to Members, in whatever committee or forum, and explain the reason for any deviation from the processes.

Communication

72. Whilst the level of support probably varied, the main political groups were represented on the S&SSC and until late in the process none of these groups expressed any opposition to the action being taken by officers. Individually, however, there appears to have been little appetite to go to court, with Members and officers each feeling that the other side was driving the process. Officers felt they were delivering the mandate prescribed by the S&SSC, while Members felt that they were supporting the clear steer from officers on which direction to follow. This indicates poor communication.
73. Some Members had concerns over the direction being followed for some time but did not feel they were given an opportunity to influence decisions until the very end, as they were usually only being briefed verbally and asked to note progress. However, any such concerns were not expressed to officers, who believed that Members had every opportunity to express their views and influence decisions, both within and outside committee meetings. This is another indicator of poor communication, where tacit support was assumed on both sides.
74. Some of the poor communication was probably a symptom of the historical and emotional baggage of the case. However, we would expect Members and officers to remain vigilant and to challenge established opinions.
75. Some Members did not appreciate the significance of the case until late in the process. There was a perception with some that even up to November 2008 the Council was just exploring what legal options were open to it, rather than being on a definite path towards court. To some Members, things suddenly became 'real' at this point when they understood more fully the risks and implications of the strategy the Council was following.

Recommendation

See Recommendation 23 below.

Settlement

76. The Council decided to explore a settlement with Mrs Laird but only just before the court hearing, by which point both the Council and Mrs Laird had incurred significant legal costs. The Council's first offer was for Mrs Laird to pay £50,000 to the Council plus £160,000 to cover the Council's costs. Mrs Laird rejected this proposal, together with a subsequent enquiry that both parties might walk away covering their own costs. In both cases, Mrs Laird would have needed to incur a large personal financial loss.
77. It is impossible to say whether Mrs Laird, or RCT Council, would have been prepared to settle at any stage, although the scale of legal costs on both sides would have been much smaller prior to 2008. Drawing on the lack of initial and interim re-assessments of the available options, it is clear that the Council did not sufficiently explore the possibility of achieving its objectives through a settlement until late in the process.

The Council did not manage this as a corporate issue, despite its financial and reputational significance, and while it focused on developing a legal case it did not apply wider project and risk management processes.

Involvement of officers corporately

78. Like Members, many senior officers were fatigued at the end of the employment dispute and were happy to allow the legal team to 'get on with it' when it came to the possible legal claim against RCT Council and Mrs Laird. New officers also wished to focus on the future strategic and service priorities of the Council, rather than getting drawn into the details of a legal case. It became a legal services-led process as a result.
79. In most crucial decisions, especially one with likely significant reputation and financial implications, one would expect to see a strong corporate focus on leading and monitoring the direction being followed. This did not happen with this legal case. The Board of Directors (comprising the Chief Executive and Strategic Directors) considered the legal dispute only through its general oversight of the corporate risk register, and was therefore not directly involved in monitoring progress or contributing to either Member briefings or decision-making.
80. Senior officers were kept informed of progress on the legal case (e.g. through statutory officer briefings, although these were infrequent). Neither the Section 151 Officer or the Borough Solicitor were members of the Board of Directors, therefore even if the Board had been more involved it may have lacked the automatic contributions of these two statutory officers. The Council has recently reviewed its arrangements and created a Senior Leadership Team, which comprises the Chief Executive, Strategic Directors and Assistant Directors (including both the Borough Solicitor and Section 151 Officer).

81. There was corporate awareness from the outset of non-legal factors and risks (e.g. possible implications on Mrs Laird's health, the Council's reputation and financial risks) but this did not prompt a more corporate response throughout most of the process. The options presented to Members at the January 2009 S&SSC meeting took account of a wider range of factors. This therefore represented a more corporate approach to decision-making, but only at the very end of the process.

Recommendation

R15. The Strategic Directors, Assistant Directors and Service Managers should immediately review all major service and corporate issues that they are individually dealing with, and check whether they are being managed properly and reported through the appropriate channels. There should be an ongoing process to ensure that significant issues are escalated to the right people. (See also risk management below).

Risk management

82. The Council tracked the Laird dispute as a corporate risk, but throughout much of the process it was monitoring the wrong risk and then removed it from the register when its risk exposure was actually increasing. The Laird dispute was included in the first ever corporate risk register the Council developed, in 2003. At the time this related to the employment dispute and throughout this protracted process the Council recognised and monitored a corporate risk that was close to, and sometimes at, the maximum quantified level under its risk scoring matrix. However, the Council did not properly reassess what risks it should recognise after August 2005, when Mrs Laird's contract was ended:
- the risk recorded on the corporate risk register remained essentially that Mrs Laird may take legal or other action against the Council, which had been the situation during the employment dispute;
 - the Council failed to recognise the related but different risks associated with taking legal action itself;
 - in March 2008 the Council removed the risk from its corporate risk register because it considered that it was no longer a corporate risk and instead it could be monitored at a divisional level by legal services, yet at the time it was actively pursuing its claim for damages against RCT Council and Mrs Laird and was therefore probably increasing its risk exposure; and
 - the Laird legal case was not re-instated onto the corporate risk register either when the decision was taken to drop the claim against RCT Council in November 2008, or in January 2009 when the decision was to continue to court, but to attempt to settle with Mrs Laird.

83. On the whole, the Council has a reasonable risk management process, which has recently been reviewed, but this case has highlighted that not all officers understood the principles, or did not give it their full attention.

Recommendations

- R16. Undertake mandatory risk management training to appropriate officers and Members. This should include Directors, Assistant Directors and Service Managers. The training should be specific to Cheltenham's own risk management process.
- R17. Immediately review all risks on the corporate and service risk registers to ensure that they are complete, appropriate and that the descriptions and risk assessments continue to reflect the current state. Any high scoring service risks should be transferred to the corporate risk register where appropriate. The updated corporate risk register should be presented to Members for consideration.

Project management

84. When embarking on a major initiative or project, especially one that is known to involve significant financial and other risks, it is sensible to employ appropriate project management processes. This is not only to ensure that the 'project' is delivered effectively, but also to provide necessary corporate involvement and appropriate accountability and reporting mechanisms. The Council did not follow a corporate project management approach in dealing with this legal action. The Council was developing a legal case and did so by applying legal case management processes, rather than managing the wider delivery of a corporate project.
85. Local authority legal actions are usually taken by legal teams on behalf of a service, department or the corporate core of the council. The Council usually appoints a corporate lead or 'Instructing Officer' who commissions the legal advice or work from the in-house legal team. The legal team would usually produce and agree a scoping document setting out details such as the objectives, approach, timetable and responsibilities. This document would be discussed and agreed with the Instructing Officer, who would ultimately have regard to advice on other risks and issues such as financial or reputational matters. For this action, the Council did not have a separate Instructing Officer or scoping document, and nor was the need for them ever considered. This was one feature of the lack of a sufficiently corporate approach.

86. While the Borough Solicitor may have fulfilled some aspects of the Instructing Officer role, the absence of any formal delegation of wider corporate responsibility meant his advice to Members was limited to legal issues. In practice, the Borough Solicitor did not personally conduct the case, but instead oversaw the development of the case by Council legal staff, supported as necessary by expert external legal advice. The legal team relied upon internal communications and a common professional understanding of the circumstances rather than writing out a clear scope or seeking instructions.
87. The legal team did recognise the action as being larger and more complex than anything they would ordinarily do, but whilst they managed the development of the legal case, wider corporate project management processes were not applied. Accordingly, there was among other things:
- no project plan;
 - no written objectives;
 - no project risk register; and
 - no formal project reporting.
88. The absence of a more robust and wider structure to deliver a corporate project meant that there was, at times, poor communication.
89. There was clearly a high internal effort over a long period of time to develop the legal case, along with significant external costs, but this consumption of resources did not trigger a more comprehensive approach to project management.
90. The Council also did not prepare a budget for the legal action. Whilst costs were monitored, this was done in the expectation that they would be recovered and reserves replenished. A more structured and budgeted assessment of likely costs in pursuing the legal action might have meant that the increasing costs influenced decisions earlier, or at least led to a greater awareness of what the Council's risk appetite was.

Recommendations

- R18. All legal casework should have a formally appointed Instructing Officer and a written scoping document. In practice, the Borough Solicitor or other members of the legal team should only be the Instructing Officer in rare circumstances. All legal actions and defences should continue to be channelled through the legal team.
- R19. On any occasion where the Borough Solicitor is the Instructing Officer rather than acting on behalf of other service departments, the Council should consider the controls in place to ensure an appropriate corporate oversight is maintained.
- R20. The Council should review its scheme of delegation to consider at what level formal project management techniques should be employed. This does not necessarily apply only to capital programmes, IT development or major change projects — but could apply (as in this legal case) to revenue activities.
- R21. The Council should review the project management skills base within its workforce, and seek to train more people if necessary, or to find ways of sharing the resource among different projects.
- R22. Significant legal casework should be supported by a budget and monitored accordingly. If further budget provision then becomes necessary, this should be considered through established virement processes.

The Council took some understandable precautions in the way it managed the Committee process, but these had the unintended consequences of limiting the opportunities for Members to be fully informed and involved.

Restriction of information

91. It is absolutely appropriate that certain aspects of a council's legal actions should be carried out *in camera*. Some details (e.g. legal strategies) need to be kept within the legal team because of the risk of prejudicing the outcome for the Council. Officers took a number of precautions around this case to restrict the flow of information.

Pre-meeting briefings

92. The usual briefings to the Chair and Vice Chair of S&SSC in advance of meetings did not cover the agenda item concerning the legal dispute, contrary to normal practice, which meant they could not help manage the business of the meetings effectively. Whilst Members were only being asked to note briefings from the Borough Solicitor at most S&SSC meetings, this approach reinforced the view with Members that the Borough Solicitor was leading the process and that they need not, or felt unable to, get more directly involved.

93. It also meant that the Committee Chair was unable to prepare sufficiently for the meetings. They were therefore less able to approach the meetings with pre-prepared questions, or actively manage the briefings in order to prompt or support opportunities for Members to challenge and debate matters and decisions. As above, it seems that Members did not seek to challenge or debate matters or decisions throughout much of the process to the extent that would normally be expected.

Recommendation

R23. Ensure Chairs and Vice Chairs of committee meetings are always briefed sufficiently on crucial matters such as those concerning significant legal cases, to allow them to manage the debate at committee and facilitate appropriate challenge by Members.

Format of Member reporting

94. Where written reports were produced they were usually distributed at the meeting and then collected back from Members at the end. Exempt minutes were equally closely controlled, being issued at the meeting so the S&SSC could review and adopt them, and then returned to officers. This approach was followed to minimise the risk that information might leak, but meant that Members' ability to review and consider key information was stifled and, compared with the Council's normal practice, rushed. The more comprehensive paper for the January 2009 S&SSC meeting was made available to Members before the meeting, although only under closed conditions for Members to read at the Council offices.

95. There was also an over-reliance on verbal briefings to S&SSC which, whilst sometimes appropriate, often meant that Members did not have time to consider things properly. In many cases, however, verbal briefings were a reasonable approach as there was little in the way of substantive progress or change to report since the previous meeting. Members did report, however, that they often had to request briefings to the S&SSC.
96. Where written papers were presented to Members, they did not adopt the Council's established approach required for Cabinet and other committee meetings. Even the more comprehensive paper in January 2009 deviated from the standard approach in that the financial implications analysis was set out in a separate paper from the Section 151 Officer, rather than providing all information in one report.
97. As highlighted above, there was also some ambiguity over whether the Borough Solicitor or the S&SSC were making decisions. Some of this may stem from the approach taken to briefing the S&SSC verbally or in writing. Members were frequently asked to 'note' the update provided. Officers saw this as effectively a decision by Members to endorse previous decisions taken under delegated authority or proposed actions, but Members simply saw this as noting information received. It would have aided everyone's understanding if there was more specific detail and clarity in written reports, and indeed verbal briefings, over what decision was expected from Members.

Recommendation

R24. Ensure that written reports to committee meetings are clear on what decision is required of Members. Noting update briefings may often be appropriate but where decisions are required, or officers are seeking endorsement or support for decisions, specific recommendations should be made.

Restriction on participation at Committee meetings

98. Because of their involvement with the employment dispute and the fact that they were due to appear as witnesses at the Court hearing, the Interim Borough Solicitor and some members of S&SSC were unavoidably excluded from some decision points. This action was taken to help remove any perception over possible bias by decision-makers at the Council. This action did not impact on the provision of information and advice provided to the S&SSC. However, it did not help continuity or completeness of understanding with those who were monitoring or taking decisions.

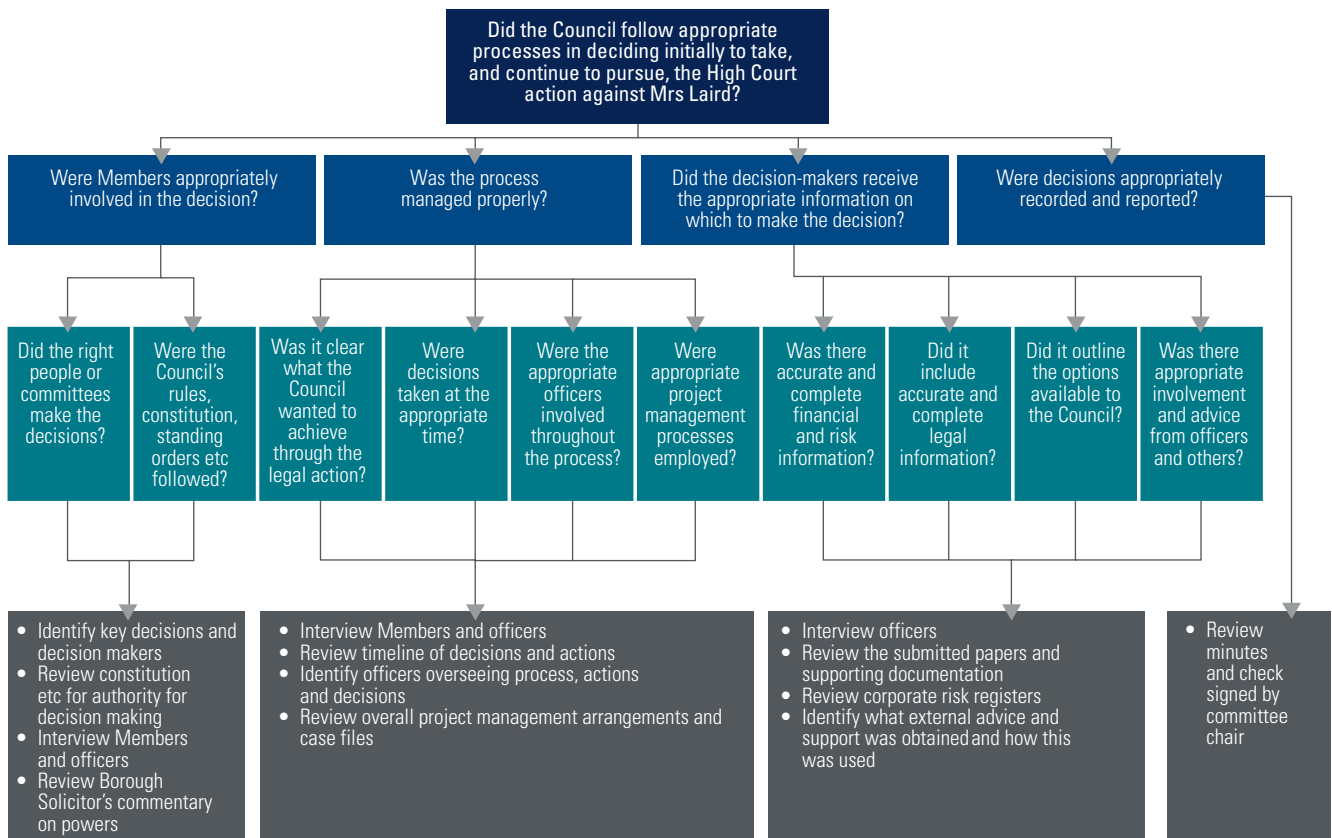
Minutes

99. Members reported that the standard of minutes for the S&SSC meetings was generally in line with that seen elsewhere within the Council. However, the quality of the minutes could have been improved, for example:
- the minutes were often very brief which can give a misleading impression that the extent or range of discussion was limited and fail to capture the detailed contributions of officers and Members. Any deliberate brevity in exempt minutes is unnecessary and it is important that minutes fully record the discussions on sensitive matters;
 - the minutes did not record which officers and Members attended (or equally did not attend) the exempt sessions of the S&SSC meetings; and
 - on the few occasions when voting did take place the minutes do not record details. This would not necessarily be expected or required legally, but would aid transparency over decision making. For example, in one instance the exempt minutes recorded a unanimous decision when in fact one Member abstained. This was not noted in the minutes. We acknowledge that in some local authorities 'unanimous' may be interpreted as 'no-one voted against' rather than the common language interpretation of 'all in favour', but a recorded vote would avoid such ambiguity.

Recommendations

- R25. Exempt minutes must record the names of those attending the meeting and include sufficient detail to record discussions and decisions fully.
- R26. Develop guidance on the circumstances when it may be appropriate to record the number of people voting for, against and abstaining. This might apply in sensitive matters, and exempt proceedings might be expected to be sensitive. The Council should clarify what it means by 'unanimous'.

Appendix 1: Principal lines of enquiry for the audit review



Appendix 2: Summary of recommendations

Recommendation under section 11 of the Audit Commission Act 1998

Consider and respond to the detailed recommendations included in this report.

Other recommendations

The role of the Borough Solicitor

- R1. Review the constitution to make clear what the Borough Solicitor can and cannot do regarding decisions to instigate and continue legal action, whether financial limits should apply to the Borough Solicitor's delegated authority, and when and from whom further sanction is required for financial expenditure above that limit.
- R2. Review the constitution for other potential instances where authority is delegated to individuals without clarity over the extent of their financial authority.
- R3. Ensure that where there are alternative people or bodies who could take a lead decision making role, that all options are evaluated and the conclusion is documented clearly.

The role of Members

- R4. Review the need for, and remit of, the S&SSC and other committees. In a Cabinet/Scrutiny model, a Council may only need regulatory committees (Licensing, Audit, Planning). Mixing decisions between Cabinet and S&SSC can be confusing. It may be possible for many operational matters to be delegated to the officers and the Chief Executive as head of paid service, perhaps supported by ad hoc Member Panels or other fora for advisory purposes.
- R5. Review constitutionally whether 'key decisions' made by committees should be subject to similar procedural and notification requirements as those made by Cabinet.
- R6. When important constitutional questions are raised, then the Council should take care to answer the precise question and also to look further at the underlying implications.
- R7. Where decisions are made by committees or officers, ensure there is sufficient briefing of, and involvement from, the relevant Cabinet leads at appropriate stages.

Objectives and option appraisal

- R8. Review the process for taking forward, and reporting back on, decisions made by committees to ensure agreed actions are delivered (or explanations provided as to why they are not).
- R9. Ensure that all relevant options are assessed when considering crucial decisions.
- R10. Options should be reassessed throughout decision processes. This includes revisiting the overall objective and ensuring that the strategy being followed remains appropriate for delivering the objective. The council needs to remain flexible, and be prepared to change objectives, options and decisions on a timely basis if information changes.

Professional advice

- R11. The Council should, in all instances, take decisions based on a balanced range of success factors including service needs, legal issues, financial implications and risk. Decisions should be informed by appropriate risk scenarios or possible outcomes.
- R12. Before starting legal proceedings that are likely to incur significant costs, estimate the potential risks and costs and revisit this analysis throughout the process, and certainly whenever there is a sea change in the case.

Crucial decision points

- R13. The Council should recognise that not taking an explicit decision (e.g. use of "The Committee notes") can amount to a positive decision to continue with the existing course of action. In sensitive or important issues, officers should carefully draft recommendations so that it is clear what will happen as a result.

Committee process

- R14. The Council should apply its usual governance processes to all decisions brought to Members, in whatever committee or forum, and explain the reason for any deviation from the processes.

Involvement of officers corporately

- R15. The Strategic Directors, Assistant Directors and Service Managers should immediately review all major service and corporate issues that they are individually dealing with, and check whether they are being managed properly and reported through the appropriate channels. There should be an ongoing process to ensure that significant issues are escalated to the right people. (See also risk management below).

Risk management

R16. Undertake mandatory risk management training to appropriate officers and Members. This should include Directors, Assistant Directors and Service Managers. The training should be specific to Cheltenham's own risk management process.

R17. Immediately review all risks on the corporate and service risk registers to ensure that they are complete, appropriate and that the descriptions and risk assessments continue to reflect the current state. Any high scoring service risks should be transferred to the corporate risk register where appropriate. The updated corporate risk register should be presented to Members for consideration.

Project management

R18. All legal case work should have a formally appointed Instructing Officer and a written scoping document. In practice, the Borough Solicitor or other members of the legal team should only be the Instructing Officer in rare circumstances. All legal actions and defences should continue to be channelled through the legal team.

R19. On any occasion where the Borough solicitor is the Instructing Officer rather than acting on behalf of other service departments, the Council should consider the controls in place to ensure an appropriate corporate oversight is maintained.

R20. The Council should review its scheme of delegation to consider at what level formal project management techniques should be employed. This does not necessarily apply only to capital programmes, IT development or major change projects — but could apply (as in this legal case) to revenue activities.

R21. The Council should review the project management skills base within its workforce, and seek to train more people if necessary, or to find ways of sharing the resource among different projects.

R22. Significant legal casework should be supported by a budget and monitored accordingly. If further budget provision then becomes necessary, this should be considered through established virement processes.

Pre-meeting briefings

R23. Ensure Chairs and Vice Chairs of committee meetings are always briefed sufficiently on crucial matters such as those concerning significant legal cases, to allow them to manage the debate at committee and facilitate appropriate challenge by Members.

Format of Member reporting

R24. Ensure that written reports to committee meetings are clear on what decision is required of Members. Noting update briefings may often be appropriate but where decisions are required, or officers are seeking endorsement or support for decisions, specific recommendations should be made.

Minutes

R25. Exempt minutes must record the names of those attending the meeting and include sufficient detail to record discussions and decisions fully.

R26. Develop guidance on the circumstances when it may be appropriate to record the number of people voting for, against and abstaining. This might apply in sensitive matters, and exempt proceedings might be expected to be sensitive.

Appendix 3: The Chief Executive's response

This report has helpfully highlighted some important points as to how the Council could have improved decision making in the long lead up to the court case involving its former managing director. Despite the extensive improvements which the Council has made to its governance arrangements over the last four years or so, the exceptional nature of the court case — part of the legacy of the long running and damaging dispute between the Council and Mrs Laird between 2002 and 2005 — meant that those improvements were not properly and consistently applied to these legal proceedings. With the benefit of hindsight it is possible to see that several chances to involve elected members more fully at key stages, and to consider a wider range of risks than simply the prospects of success in the legal proceedings, were missed. In the event, a fuller analysis of the issues and risks happened only in the weeks immediately preceding the hearing of the Council's claim, by which time options (other than progressing the case to a full hearing) were limited.

It is right, as noted in the report, that it was not unreasonable for the Council to go to court to seek recovery of the significant costs arising from its dispute with Mrs Laird; the trial judge himself noted that this was a case "clearly... fit for trial". It is also right that if all governance processes had been fully applied in accordance with very best practise the Council may well still have decided to pursue the claim to trial. Even so, there are many important lessons arising from the matters detailed in the report, not only for Cheltenham Borough Council but for local government more generally; novel and difficult cases such as this are perhaps the very ones which most demand thorough and careful application of good governance principles.

The Council will now consider the report and its recommendations with a view to formulating, and thereafter monitoring implementation of, an action plan which will address identified weaknesses in the Council's constitution and governance processes.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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