

EXECUTIVE DECISION NOTICE

SUBJECT MATTER:	DELEGATION REVIEW – AUTHORISATION TO BRING CRIMINAL PROSECUTIONS AND DEAL WITH ANCILLIARY ADMINISTRATION
DECISION:	<p>To authorise the Head of Legal Services Suzanne Antrobus to determine whether to proceed with a prosecution in the Magistrates' on behalf of the Council; (where there are no existing delegations in the Constitution) provided it is brought under existing legislation that provides the Council with statutory powers to bring criminal proceedings (for the avoidance of doubt this delegation excludes any prosecution brought under section 222 of the Local Government Act 1972) – such decision to prosecute must be recorded via an officer executive decision and be determined and conducted in line with the prevailing Code for Prosecutors issued by the Director of Public Prosecutions pursuant to Section 37 of the Justice Act 2002.</p> <p>The delegation to remain in place until further reviewed.</p> <p>Clarification 11.10.2022 – for the avoidance of doubt this delegation includes issuing summons and generally dealing with all related matters to the determining that a prosecution is necessary and should be proceeded with including but not limited to issue, withdrawal, all ancillary applications including costs together with all necessary administration with the Magistrates' and any higher courts.</p>
DECISION TAKER:	Sandra Stewart
DESIGNATION OF DECISION TAKER:	Director of Governance & Pensions
DATE OF DECISION:	1 August 2022
REASON FOR DECISION:	<p>The local authority has the power to prosecute in respect of a number of types of crime set out in legislation. This could be certain types of benefit fraud, fly-tipping, fraudulent use of a blue badge, health and safety offences, noise nuisance, irregular school attendance, issues with taxi licensing and breaches of planning notices.</p> <p>The current constitution enables the Director Governance and Pensions under Part 3a - Terms of Reference and Scheme of Delegation C. DIRECTOR (GOVERNANCE AND PENSIONS) (1) To institute and defend legal proceedings.</p> <p>This delegation to Head of Legal Services is to enable for the more efficient and timely legal proceedings and to avoid the duplication of effort as the Head of Legal Services has day to day management responsibility for the solicitors and lawyers advising and conducting prosecutions.</p>
ALTERNATIVE OPTIONS REJECTED (if any):	Not to delegate the authority which would leave the Council with reduced capacity and resilience.
CONSULTEES:	Head of Legal Services.

FINANCIAL IMPLICATIONS:	None
LEGAL IMPLICATIONS:	<p>The Council Constitution Part 2 - Articles of the Constitution Article 18 - Finance, Contracts and Legal Matters provides at 18.3 Legal Proceedings The Director (Governance, & Pensions) is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or any case where the Director (Governance, & Pensions) considers that such action is necessary to protect the Council's interests.</p> <p>The Director of Public Prosecutions issues the Code for Prosecutors under Section 37 of the Justice Act (NI) 2002.</p> <p>The Code sets out guidelines on the general principles to be applied in determining in any case whether criminal proceedings should be brought, what charges should be preferred and how prosecutions should be conducted.</p> <p>It also sets out the standards of conduct that is expected from all prosecutors and external counsel instructed on their behalf.</p> <p>The case of <i>R v AB and others</i> [2017] EWCA Crim 534 is a useful clarification of the extent of a local authority's powers to initiate a prosecution. There was no minute of the decision to prosecute, a fact, which was the subject of adverse comment by the court. It was at this point given the facts that that there should have been a decision about whether to invite the prosecution to be undertaken by the Director of Public Prosecutions. Hence the need for an officer executive decision.</p>
RISK MANAGEMENT:	To provide more efficient and timely administration of decisions.
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	N/A
ACCESS TO INFORMATION:	<p>NON-CONFIDENTIAL</p> <p>This report does not contain information which warrants its consideration in the absence of the Press or members of the public</p>
REFERENCE DOCUMENTS:	Any further information can be obtained by contacting Sandra Stewart, Director of Governance & Pensions by telephone on 0161 342 3502 or by email: sandra.stewart@tameside.gov.uk



Signed Dated: 11 October 2022
Sandra Stewart, Director of Governance & Pensions