

15. Head Law

The Head of Law has managerial and professional responsibility for the service area and is the Solicitor to the Authority and the Authority's Monitoring Officer.

The service, which provides a direct service to the public and supports all service departments in the effective consideration of formal complaints, maintains the corporate governance arrangements in the Authority and standards in decision-making, maintains and deals with searches of the local land charges register and other property related enquiries, provides legal advice and assistance to the Authority, provides direct administrative support for the Authority's elected members and registers births, deaths, still-births, marriages and civil partnerships.

The responsibilities and powers of the Authority's Monitoring Officer derive from legislation contained in section 5 and section 5A of the Local Government and Housing Act 1989 and provide that the designated Monitoring Officer must report to the relevant body any proposal, decision or omission which is likely to be unlawful, or any finding of maladministration by the Local Government and Social Care Ombudsman.

The Head of Law will also be the Proper Officer in accordance with the Local Government Acts, (except where signified under other officer delegations).

In addition to the general delegations set out in section 5 of the Scheme, the Head of Law is authorised to exercise the following specific functions:

Authorised officers

LG1 To authorise the relevant officers of the Authority for the purposes of any matter coming within appropriate legislation, bye-laws, regulations and orders.

Births, deaths, marriages and civil partnerships

LG2 To give approval to premises for the purposes of the Marriage and Civil Partnership (Approved Premises) Regulations 2005 and to give views on the suitability of premises for reasons other than reasons of fire safety and health and safety, with the Superintendent Registrar being authorised to act in the absence of the Head of Law or if the Head of Law should be unable to act for any other reason.

LG3 To determine the level of the fee for applications for the grant or renewal of approved premises status, in consultation with the Superintendent Registrar and the other Authority and statutory officers to be involved in the determination of applications; and to annually review the fee to take into account the official rate of inflation and the fee levels in other Tyne and Wear Council areas.

LG4 To determine discretionary conditions to be attached to grants or renewals of approved premises status.

- LG5 To take action to revoke any approval of approved premises status.
- LG6 To manage the scheme covering the registration of births, deaths and marriages.
- Child and adult protection**
- LG7 To institute legal proceedings and make all necessary applications under the Children Act 1989 and Adoption and Children Act 2002.
- LG8 In consultation with the Director of Services for Children to make wardship applications to the High Court and any applications for variation, discharge or revocation of any such order.
- LG9 To deal with all matters in connection with requests for disclosure of documentation etc. made in criminal proceedings where public interest immunity is a consideration.
- LG10 To prepare and seal change of name deeds on behalf of children in the care of the Authority and file appropriate documents with the Court.
- LG11 To represent approved social workers in court proceedings, except in such cases where the Head of Law determines that there is a conflict of interest (or potential for conflict of interest to arise) between the approved social worker and the Authority.
- LG12 To apply to the Court of Protection for appointment and to act as deputy for property and financial affairs and for personal welfare, including treatment in relation to individuals.
- Corporate and statutory social services complaints**
- LG13 To administer the operation of the Authority's corporate and 'social services' complaints procedures.
- LG14 To discontinue the consideration of any complaint under the Authority's procedure in situations where it appears that the complaint is solely an appeal against a decision dictated by Authority policy, properly established and administered, or by statute.
- LG15 To appoint panellists to serve on, and make all necessary arrangements to convene and clerk, Complaint Review Panels established to consider complaints under The Local Authority Social Services Complaints (England) Regulations 2009 and The Children Act 1989 Representations Procedures (England) Regulations 2006.
- Counsel's opinion and representation**
- LG16 To obtain Counsel's opinion where it is considered to be in the Authority's interests, and to instruct Counsel to represent the Authority in any court or tribunal or other appropriate circumstance.

Court and tribunal proceedings

- LG17 To bring all appropriate legal proceedings under all relevant legislation.
- LG18 Apply to the Magistrate' Court under section 20 of the Criminal Justice and Police Act 2001 for a closure order.
- LG19 To make any application or defend any application or appeal, or take any other steps as required under the Anti-social Behaviour, Crime and Policing and Act 2014.
- LG20 To exercise discretion and to institute proceedings (both civil and criminal) on behalf of the Authority in the appropriate court or tribunal, including any steps in relation to recovery, enforcement or bankruptcy proceedings.
- LG21 To exercise discretion to appeal against decisions of all courts and tribunals.
- LG22 To exercise discretion to defend proceedings and resist appeals in all courts and tribunals.
- LG23 To exercise discretion, in consultation with the Director of Resources, to settle court and tribunal proceedings or any other potential proceedings.
- LG24 To authorise staff pursuant to section 223 of the Local Government Act 1972 to appear on behalf of the Authority in proceedings before a Magistrates Court where those staff members would otherwise not have rights of audience before the Court.

Deceased person's estate

- LG25 To release property exceeding £200 in value but not exceeding £5,000 in value which is held by the Authority on behalf of the estate of a deceased person to entitled persons without requiring the production of a grant of probate of the will or letters of administration.
- LG26 To serve any notices which may be required under the provisions of the Dutch Elm Disease (Local Authorities) Order 1984 subject to consultation with the Director of Environment.

Education appeals

- LG27 To appoint panels of persons from whom Education Appeals Panel can be constituted.
- LG28 To constitute and to act as Clerk to Education Appeals Panels to consider admission appeals and exclusion reviews in accordance with the School Standards and Framework Act 1998 and the Education Act 2002 as amended.

Local Government and Social Care Ombudsman

LG29 In consultation with the Mayor and the Chief Executive to consider any report by the Local Government and Social Care Ombudsman which finds that injustice has been caused to a person aggrieved in consequence of maladministration by the Authority and to notify the Local Government and Social Care Ombudsman of the action which the Authority proposes to take.

(Note - Copies of the Local Government and Social Care Ombudsman's report and response of the Authority will be circulated to all Members of the Council).

Land use and ownership

LG30 To make requests for information relating to land use and ownership under section 16(1) of the Local Government (Miscellaneous Provisions) Act 1976.

LG31 To serve notices under section 146 of the Law and Property Act 1925 (notice before forfeiture requiring breach of covenant to be remedied).

Mayor and Members – conferences

LG32 To approve attendances at conferences for the Mayor and Elected Members.

Monitoring Officer

LG33 As Monitoring Officer, and in consultation with the Chief Executive, to determine the appropriateness of petitions in accordance with the Authority's Petitions Scheme.

LG34 In consultation with the Chair of the Constitution Task Group, to make minor changes to the Constitution and its associated documents to reflect organisational or legislative change when the power remains unaltered.

LG35 To make any textual or grammatical corrections to the Constitution and its associated documents.

LG36 To act as the Proper Officer to receive and acknowledge receipt of complaints of failure to comply with the Code of Conduct for Members and Co-opted Members in accordance with the Authority's adopted arrangements.

LG37 a) To review complaints received in respect of any alleged breach by any elected or co-opted Member of the Council of the Code of Conduct for Members and Co-opted Members and determine, in consultation with the Independent Person:

i) whether the allegation, if proven, would constitute a failure to observe the Code of Conduct; and

- ii) if it would constitute such a failure, determine (applying the Authority's adopted assessment criteria), whether the complaint should be investigated or referred for local resolution, and following such determination to refer the complaint for either purpose.
- b) To refer the review of any such complaint received to the Standards Committee where the Monitoring Officer considers it inappropriate for him/her to take the decision as to whether a complaint should be accepted as a complaint and/or investigated or referred for informal resolution.
- c) To determine requests for anonymity received from a complainant in relation to a complaint that a Member has failed to comply with the Code of Conduct for Members and Co-opted Members.
- d) Where a request for anonymity has been granted, to determine when the identity of the complainant will be provided to a Member who is the subject of a complaint that he/she has failed to comply with the Code of Conduct for Members and Co-opted Members.

- LG38 To undertake informal/local resolution with respect to complaints that a Member has failed to comply with Code of Conduct for Members and Co-opted Members, in consultation with the Independent Person and/or the Chair of Standards Committee as appropriate in accordance with the Authority's adopted arrangements.
- LG39 To appoint an Investigating Officer to investigate a complaint that a Member has failed to comply with the Code of Conduct for Members and Co-opted Members.
- LG40 To submit the report of the Investigating Officer where no breach of the Code of Conduct for Members and Co-opted Members has been found, or where breach has been found but informal resolution of the complaint is inappropriate or has not proved possible, to the Standards Committee.
- LG41 To undertake, in consultation with the Chair of the Standards Committee, the pre-hearing process in advance of a hearing of a complaint by the Standards Committee in accordance with the authority's adopted arrangements, and to make all arrangements associated with the administration of such hearings.
- LG42 To receive and if appropriate accept, in accordance with the authority's adopted arrangements, any request from a Member subject to a decision of the Standards Committee where breach of the Code of Conduct for Members and Co-opted Members has been found, and to refer the decision to the Independent Person of another authority for review.

LG43 To provide reports to the Standards Committee in relation to the number and nature of complaints received, advice on the progress of any investigations and to advise the committee of matters where training or other action may lead to the promotion or maintenance of high standards of conduct by the authority's elected or co-opted Members.

LG44 To undertake any other necessary or appropriate actions to facilitate the administration of the authority's adopted arrangements in relation to the Code of Conduct for Members and Co-opted Members.

LG45 To undertake, in consultation with the Independent Persons and the Chair of the Standards Committee, reviews of assessment decisions where the complainant is dissatisfied with the initial decision of the Monitoring Officer not to refer a complaint for investigation.

LG46 To refer the report of the Investigating Officer which identifies a breach of the Code of Conduct, where informal/local resolution of a complaint is unsuccessful, to the Standards Committee/Sub-Committee for a formal hearing and determination.

Parent Governor Representatives

LG47 To appoint Parent Governor representatives to local authority committees dealing with education as set-out in the Education Act 1996 Section 499 and Parent Governor Representatives (England) Regulations 2001.

Planning

LG48 In consultation with the Chair and Deputy Chair of Planning Committee to:

- a) serve, vary or withdraw Planning Enforcement Notices;
- b) serve, vary or withdraw Stop Notices;
- c) serve, vary or withdraw notices requiring the proper maintenance of waste land or buildings;
- d) serve, vary or withdraw Breach of Conditions Notices;
- e) serve, vary or withdraw Planning Contravention Notices;
- f) serve, vary or withdraw Temporary Stop Notices;
- g) serve, vary or withdraw Advertisement Discontinuance Notices;
- h) serve, vary or withdraw Advertisement Action Notices;

- i) serve, vary or withdraw Advertisement Removal and Defacement Notices;
- j) serve, vary or withdraw Building Preservation Notice;
- k) serve, vary or withdraw Listed Building Enforcement Notice;
- l) serve, vary or withdraw Repair Notices pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended);
- m) serve, vary or withdraw Urgent Work Notices pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended);
- n) seek injunction with regard to unauthorised works or uses to listed buildings/buildings in a conservation area;
- o) instigate prosecution proceedings against non-compliance in relation to all notices and injunctions listed above;
- p) make applications to the Magistrates Court to apply for a Planning Enforcement Order in relation to any act of concealment of a breach of planning control;
- q) take all forms of enforcement and proceedings in respect of contraventions of hazardous substances control under powers contained in the Planning (Hazardous Substances) Act 1990;
- r) make and confirm Tree Preservation Orders where there have been no objections to the order;
- s) undertake all forms of enforcement and other proceedings in respect of unauthorised works to or the felling of protected trees.
- t) To revoke tree preservation orders in the following circumstances:
 - A new tree preservation order has replaced an existing tree preservation order; or
 - All trees within the tree preservation order have been felled and not replaced.
- u) To vary tree preservation orders in the following circumstances:
 - A tree or trees within a tree preservation order have been felled; or
 - A tree or trees have been planted to replace a tree or trees felled.

LG49 To issue decision notices on applications for works to trees subject to a Tree Preservation Order.

LG50 In consultation with the Chair and Deputy Chair of the Planning Committee to authorise applications to the Magistrates' Court for orders in respect of buildings considered to be dangerous to persons in the street or in such buildings and to issue notices to expedite the carrying out of appropriate remedial measures to buildings considered to be in a dilapidated or derelict condition under the appropriate provisions of the Building Act 1984 and other relevant legislation.

LG51 In consultation with the Chair and Deputy Chair of the Planning Committee to serve notices where considered appropriate under section 215 of the Town and Country Planning Act 1990 requiring steps to be taken to improve the condition of a property and/or land in its curtilage.

Procurement

LG52 In consultation with any of the Authority's representatives on the North Eastern Procurement Organisation to accept tenders obtained on the Authority's behalf by the North Eastern Procurement Organisation.

Regulation of Investigatory Powers Act

LG53 To act as the Authority's Senior Responsible Officer under the Regulation of Investigatory Powers Act (RIPA) 2000 and be responsible for maintaining effective procedures on behalf of the Authority under this Act. Such procedures to include the appointment of authorising officers, the maintenance of a list of authorising officers, the maintenance of a register of authorisations and ensuring appropriate training provision. A report to be submitted to Cabinet annually on the operation of a RIPA policy and to the Regulation and Review Committee at least annually on the Authority's use of the powers.

Right to buy and housing defects

LG54 To serve all notices on behalf of the Authority under Part V of the Housing Act 1985 and to take all necessary action in connection therewith in connection with tenants right to buy.

LG55 In consultation with the Director of Housing and the Director of Resources determine the area and curtilage of dwellings to be conveyed to tenants exercising the Right to Buy under the Housing Act 1985 (as amended), in accordance with legislation and any scheme laid down by the Authority.

LG56 In consultation with the Director of Resources to determine applications for the sale of the freehold reversion of Authority flats where both the tenants in the property are exercising their Right to Buy their respective leasehold interest.

LG57 In consultation with the Director of Resources to take all necessary action with regard to the implementation of the provisions of the Housing Defects Act 1984 and orders made thereunder.

LG58 In consultation with the Director of Resources and the Cabinet Member

for Housing to approve all valuations for Right to Buy and to exercise any discretionary powers of the Authority in relation thereto.

War charities

LG59 To deal with all matters in connection with the registration of war charities.

Wildlife and Countryside Act 1981 and Hedgerows Regulations 1997

LG60 In consultation with the Director of Regeneration and Economic Development to authorise the making of “legal event” modification orders under section 53(2) of the Wildlife and Countryside Act 1981, which are consequential on events listed in section 53(3)(a) of the Act and take effect on being made, namely the coming into operation of any enactment or instrument, or any other event, whereby:

- a) A highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;
- b) A highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or
- c) A new right of way has been created over land in an area to which the map relates, being a right of way such that the land over which the right subsists is a public path.

LG61 In consultation with the Director of Regeneration and Economic Development to make limestone pavement orders under section 34(2) of the Wildlife and Countryside Act 1981

LG62 In consultation with the Director of Regeneration and Economic Development to exercise powers relating to the protection of important hedgerows under the Hedgerows Regulations 1997.