

**Association of Council Secretaries and Solicitors
Council meeting 30 April 2010**

Liaison with Attorney General's Office

Further to the report to Council at its last meeting in February, a meeting was arranged by the Attorney General's Office, together with Government departments having an interest in LA prosecutions and the HSE, at which the Policy and Development Officer attended. The minutes are included below, providing a useful summary of discussions.

The Attorney General as part of her overview of prosecution activity was seeking to ensure that the highest standards were applied across the public prosecution service, including local government. The CPS Code (recently revised), the Prosecutors Convention and the Victims Pledge were put forward as best practice guidelines.

Better liaison was developing between prosecuting bodies, (there are clear arrangements between local authorities and HSE, for example) but there appeared to be further opportunities for improvement of prosecuting standards via training and liaison between organisations.

Council is invited to consider what further involvement ACSeS might have.

Tony Kilner
Policy and Development Officer

AGO

Minutes

Meeting	Strengthening the Links Between Local Authority, GLS and CPS Prosecutors
Date	17 th March 2010
Attendees	Tony Kilner, ACSaS; Les Beaumont, Gerry Kaspozok, Peter McNaught HSE; Arwel Jones, Neil Masters CPS; Sue Edwards BIS and Chair Whitehall Prosecutors' Group; Chris Burke DEFRA; Denise Bradshaw RCPO/CPS; Derek Curtis, Claire Beddow DWP, Adrian Russell, Sue Patten Attorney General's Office
Apologies	
Minutes	

Areas initially identified for future co-ordination/cooperation

- ACTION ON FRAUD: forge closer links between Local Authorities and the NFA, the Operational Board chaired by the SFO in relation to fraud casework, and possibly revive the idea of a Protocol which the CPS tried to negotiate between police and Trading Standards in relation to fraud. ACSaS and LACORS.
- Consider the role of Local Authorities in asset recovery and the mechanisms for this e.g. the increasing number of RARTs. The important role of the ARA in this regard has most likely ceased since SOCA took on the role.
- Encourage greater communication of legal/policy/standards developments between the AGO, CPS and Whitehall Prosecutors' Group and key Local Authority grouping such as ACSaS and LACORS. ACSaS issues a regular news bulletin. LACORS has a website accessible to members only.
- The CPS's new centralised Appeals Unit, due to commence its work in April/May, will be a useful focal point for identifying Local Authority cases with wider potential impact as well as to inform Local Authority solicitors of current legal developments. Consider how this mechanism could work, in the same way as this is being considered with Government Legal Service prosecutors.
- Consider inviting Local Authorities to sign up to the Prosecutors' Convention.
- Work with ACSaS to identify whether input from national prosecutors such as the CPS, SFO etc could be valuable in relation to training courses run for Local Authorities in the area of enforcement and prosecution best practice.
- Publicise the Prosecutors' Convention and the Victims' Pledge via LACORS and ACSaS as well as the revised Code for Crown Prosecutors just issued.
- CPS to consider developing relationships locally through local strategic partnerships.

The Local Authority picture: prosecutions

- There are around 500 Local Authorities. Enforcement policy and practice varies widely, partly depending on local pressures/conditions and partly depending on the availability of expertise and enthusiasm for enforcement work within the Local Authority.
- In some areas of enforcement work prosecutions are common and the pressure from local people to see enforcement action is at its highest: typically environment, health and safety and Trading Standards, where there is also professional investigation and enforcement expertise within Local Authorities. The closest and most coherent relationship with Government is with the HSE. Local Authorities are well set up for health and safety enforcement activity. Prosecutions are very common also in areas such as taxi licensing and breach of parking restrictions.
- The Authority's Legal Department is most commonly responsible for taking prosecution decisions. However in some cases the decision may still be taken by a Committee. Solicitors are likely to be aware of the Code for Crown Prosecutors but a mechanism for helping them keep up to speed with developments and changes would be valued.
- The relationship with the police is now cemented by local strategic partnership arrangements. The police often wish to play no part in minor local offences such as breaches of bye-law offences. However, they may work in partnership with Local Authorities in relation to test purchases to detect the selling of alcohol to children and the police will often prosecute.
- Local strategic partnerships facilitate a collective approach to providing services locally in a more strategic way. There are in some cases shared key performance indicators and more working together. However it is not clear how far this approach is replicated in relation to enforcement issues over and

above the published cross-Government strategies such as the anti-alcohol strategy, the work on gangs etc.

- Local Authorities sometimes approach the CPS where a prosecution needs to be brought that is beyond the capacity/experience/budget of the Local Authority that has conducted the investigation. Complex investigations and prosecutions can be daunting for Local Authorities to undertake. Budget pressures are likely to increase in the current financial climate but there is increasing pressure from CIPFA and the Audit Commission on Local Authorities to concentrate more on tackling fraud.
- For chains such as Tesco, one Local Authority takes the lead on bringing enforcement action wherever the offence/breach has taken place.
- ACSaS works closely with LACORS and also with the Local Authority Group of the Law Society.

The Local Authority/Health and Safety Executive relationship

- By statute, Local Authorities enforce health and safety laws. The HSE has issued standards, policies and toolkits (including a requirement to apply the Code for Crown Prosecutors), coupled with peer review and self assessment tools as quality assurance mechanisms. Guidance is shared and liaison is effective. The HSE has a keen interest in securing consistency of approach to enforcement nationally and retains an overview of what is happening at local level.
- Local Authorities are signatories to the Work-Related Death Protocol.

DEFRA and Local Authorities

- Local Authorities enforce most environmental laws and there is often a requirement to report back to DEFRA on enforcement action taken. DEFRA has a concurrent power to prosecute and who prosecutes may depend on which organisation is better placed in the individual case. Environment offending

can be major, can be linked with other criminality and is increasingly organised and profitable.

- The Environment Agency, Lancashire and Rossendale Borough Councils were found guilty of maladministration by the Parliamentary and Local Government Ombudsmen in January 2010 in relation to the failure to take action, despite ample evidence of serious breaches, to prevent an individual from using his land as an illegal landfill site, which had wrecked the local area, damaged the value of neighbouring property and made the neighbours' lives a misery. It was found that the authorities had failed to work together despite the existence of protocols requiring co-ordinated action.
- There are quite poor links between lawyers in Local Authorities and DEFRA, although the links at investigator/enforcement level are good.
- DEFRA shared its enforcement policy, but inevitably this allows for discretion to be exercised in individual cases.

DWP and Local Authorities

- Local Authorities are responsible for enforcement of offences relating to benefits distributed locally, such as housing benefit and Council Tax benefit. But local benefit frauds are often not self-contained and involve national benefits enforced by the DWP. For this reason Local Authorities and DWP have concurrent jurisdiction to enforce in local and national benefit cases. There is a clear potential link with HMRC tax credits, but Local Authorities cannot prosecute tax credit fraud. Ministers see the Local Authority role in prosecuting fraud as a very significant one.
- The Welfare Reform Act requires Local Authorities to apply the Code for Crown Prosecutors.
- Since the Benefit Fraud Inspectorate was wound up there has been no organised scrutiny of Local Authority enforcement action.

- Local Authorities have the right to set their own prosecution policies. They have power to apply administrative penalties. There is no central mechanism to oversee the enforcement policies being applied locally. The DWP Fraud Investigators' Guide is shared and available nationally, but Local Authorities are not obliged to follow it. Local Authorities may contract out their investigations. But most have in-house fraud teams. With the squeeze on finances, it looks likely that this will have its effect on fraud investigations, especially where prosecutions in relation to national benefits are concerned.
- DWP issues circulars discussing legal issues in relation to benefits.
- Local Authorities can opt to have DWP prosecutors bring their prosecutions, and about 50% do so. SLAs are in place. However, other Local Authorities use in-house or external solicitors, or their investigators.
- LAs have no access to financial investigation expertise or the ARIS.

CPS

- Where approached to take on a prosecution for a case investigated by a Local Authority the CPS can do so under s.3 of the Prosecution of Offences Act 1985 or can take over proceedings if asked, once instituted. Cases are looked at on their individual merits.
- Most CPS prosecution policy and best practice is available on the CPS's external internet website.

Whitehall Prosecutors' Group

- The Group brings together central government departments with prosecuting teams (non CPS), and some NDPBs such as the Environment Agency, Gambling Commission etc. It has not historically wanted to extend its "family" outside government.

Actions

No.	Action	Responsible Owner	Date
1.	Provide contact details for LACORS to Sue Patten	Tony	
2.	Open lines of communication with the Local Authority training company to start discussions with the CPS and Whitehall Prosecutors' Group as regards how best to contribute	Tony with Neil and Sue E	
3.	Revised Code to be provided to ACSaS as well as LACORS	Neil	
4.	Engage with ACSaS regarding the Prosecutors' Convention	Tony and Sue P	
5.	Put the relationship with Local Authorities on the agenda for the NFA and the SFO chaired Operational Board looking at strategic and case allocation issues	Sue P	
6.	Consider how best to communicate with Local Authorities (as well as the GLS) in relation to appeal points	Neil (Alison Levitt QC)	
7.	Publicise the Code, the Prosecutors' Convention and the Victims' Pledge	Tony	