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**A separate report is submitted in the private part of the agenda in respect of this item as it contains information required to be kept private in accordance with Schedule 12A Local Government Act 1972. The grounds for privacy are that it refers to information relating to the financial or business affairs of any particular person (including the authority holding that information), and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.**

**Cabinet Member for Policing and Equalities**

22 January 2015

**Name of Cabinet Member:**

Cabinet Member for Policing and Equalities – Councillor Townshend

**Director Approving Submission of the report:**

Executive Director of Resources

**Ward(s) affected:**

All

**Title:**

*Magistrates' Court Building*

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**Is this a key decision?**

No

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**Executive Summary:**

When the Council constructed the Coventry Magistrates' Court building in the 1980s, the premises included a "Probation Suite" whose construction cost of around £1.2 million was to be met by the Council initially but repaid by the Probation Service over a period of some 40 years. Annual repayments were made until 2007. However, the Probation Service now disputes liability to make any further payments.

This matter was considered by Cabinet on 11 December 2012, where authorisation was given to commence legal proceedings to recover the outstanding loan monies. The Cabinet Member (Community Safety & Equalities) was given delegated authority to determine alternative strategies or decisions as the matter progresses and the matter was considered at Cabinet Member meetings on 24<sup>th</sup> February 2014, 1<sup>st</sup> May 2014, 14<sup>th</sup> November 2014, and 18<sup>th</sup> December 2014. This report is an update as to the progress of the proceedings to date and considers the options going forward.

**Recommendations:**

Cabinet Member is recommended to:

- (1) Note the progress made since the last report dated 18 December 2014 and direct that a further report be submitted for consideration at the Cabinet Member meeting on 26 February, 2015.

**List of Appendices included:**

None.

**Other useful background papers:**

None.

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## **1. Context (or background)**

1. **Dispute History**-During the 1980s, the Council constructed the Coventry Magistrates' Court, which included a Probation Suite. A proportion of the construction cost of the Suite (approximately £1.2 million) was to be met by the Council initially but repaid by the Probation Service over a period of some 40 years. However, the Probation Service disputes liability to make any payment after 2007, when ownership of the court building was transferred to Central Government.
2. The arrears of annual debt payments up to and including the financial year 2012/13 amount to a total of £491,571, and on 21<sup>st</sup> January 2013 the Council issued High Court proceedings for that sum plus interest.
3. The local Probation Service has operated through a large number of different bodies since 1990. Therefore, the Council took the precaution of naming as defendants all of the bodies identified as possibly liable, a total of 9 defendants. It then became clear that the active Defendants were the 6<sup>th</sup> to 9<sup>th</sup> defendants i.e. Staffordshire and West Midlands Probation Trust, the Secretary of State for Communities and Local Government, the Lord Chancellor and the Secretary of State for Justice, and the National Offender Management Service.
4. The active Defendants filed defences disputing liability. In essence, the active defendants say that there was an occupation agreement, rather than a loan agreement, with the Council under which the Probation Service was paying money to the Council as owner of the Magistrates' Court. Therefore, since ownership of the Magistrates' Court building was transferred to Central Government in or before 2007, the Probation Service has no liability to make further payments to the Council. Further, the active defendants do not accept that any liability to pay the Council which may have arisen historically has passed to any of them as successor organisations. Finally, the 7th to 9th Defendants have counterclaimed that they overpaid the Council in 2006/7 and are entitled to be repaid almost £100,000, plus interest.
5. The active Defendants proposed an ADR process of "Early Neutral Evaluation" whereby an independent QC would simply review the parties' cases and give an opinion on the merits. The Council considered that this was inappropriate because it would not in itself bring about settlement. The Council therefore suggested that a more effective way forward was an enhanced form of mediation, in which the mediator (probably a QC), was requested to express his or her views to each party on the merits of their case. The active Defendants agreed to this approach, in the form of an Evaluative Mediation.

## **The Evaluative Mediation**

6. On 25<sup>th</sup> September 2014, the parties attended an Evaluative Mediation with Amanda Tipples QC acting as the Mediator.
7. The Court proceedings had been stayed to enable the parties to attempt Alternative Dispute Resolution (ADR). The parties requested that this stay be extended on the basis that if the case has not settled within 28 days of the date of the new Order, the Council will apply either to extend the stay (with the other parties' consent), or for a directions hearing to be fixed on the first available date. The new Order was sealed on 11<sup>th</sup> November 2014 and the Council was required to update the court in December. As the Defendants indicated that it may take them until January 2015 to obtain Central Government approval for an improved settlement offer, the active parties have applied to court to extend the stay until the end of January 2015. It now appears that the Staffordshire and West Midlands Probation Trust has been dissolved as part of a further reorganisation of the Probation Service.

## **2. Options considered and recommended proposal**

- (i) the Options considered and recommended proposal are as set out in the accompanying private report.

## **3. Results of consultation undertaken**

No consultation is considered to be appropriate.

## **4 Timetable for implementing this decision**

If the case fails to settle as a result of the current negotiations with the Defendants, the Council will have the option to apply for directions to pursue its claim towards a trial at court. It may take 12 months or more for the case to come to trial in the High Court.

## **5. Comments from Executive Director of Resources**

### **5.1 Financial implications**

The Council has commenced legal proceedings to recover sums it considers it is lawfully entitled to, whilst recognising a duty to keep the merits of its case under review.

### **5.2 Legal implications**

The Council has commenced legal proceedings to recover sums it considers it is lawfully entitled to, whilst recognising a duty to keep the merits of its case under review.

## **6. Other implications**

None

**6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

Money recovered in excess of costs incurred will contribute to the general financial well-being of the Council.

**6.2 How is risk being managed?**

This topic is dealt with in the accompanying private report.

**6.3 What is the impact on the organisation?**

This topic is dealt with in the accompanying private report.

**6.4 Equalities / EIA**

The decision to be made is not considered to have any Public Sector Equality Duty implications

**6.5 Implications for (or impact on) the environment**

None.

**6.6 Implications for partner organisations?**

None.

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**Directorate: Resources**

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## **Appendices**

None