

## Appendix 2

### Legal Advice

The Director of Legal Services provided advice to inform the original decision taken by the Community & Leisure Sub-Committee at a meeting on 17 October 2006 in consideration of the general issue of funding to the Rape Crisis and Sexual Abuse Centre. The advice was as follows:

'where a funding application falls outside the criteria established for the relevant grant scheme then Council should normally apply the general principle that the Council as a public body in operating grant schemes must act and be seen to be acting in a manner which is objective, transparent and fair. There may however be circumstances where an application for funding is made to Council which does not fall within the criteria of any grant scheme, but which the Council might wish to support on the basis that there are special or exceptional circumstances which would justify doing so.

Accordingly, Council does have a discretion to consider applications of such a nature, but the Members must exercise particular care in coming to their decision. Prior to taking any decision, the Members should have regard to all relevant matters, including in particular the following:

1. The advice of the officers, particularly advice in relation to any adverse effects that an agreement to award funding might have on the ability of the relevant Department to operate their grant programmes in a stable and fair manner;
2. The issue of whether a decision to award funding might create a precedent for other applications which would result in the Council being placed in a difficult situation at a future date;
3. Whether any other organisation is likely to be able to plead special circumstances of the same general nature; and
4. Any other issues which might be relevant in the particular circumstances.

It is a matter for the Members to come to an informed decision, having taken all the foregoing matters into account. If the Members feel that there are exceptional or unique circumstances relating to the funding application and that the merits of agreeing to the application outweigh any potential negative difficulties, the Members have discretion to make that decision'.

At the November 2008 meeting, the Development Committee asked for further legal advice in relation to the ability of Council to provide financial or other assistance to the Rape Crisis and Sexual Abuse Centre under the following two headings:

- Can the Council provide financial support to an organisation in a situation where its latest audited accounts demonstrate that its current liabilities significantly exceed its total assets?
- Can the Council alternatively offer technical support to the group for the purpose of enabling its books to be audited for the last financial year in order that Council and other potential funders will then be able to make a proper assessment of its actual financial position?

The Director of Legal Service has indicated the previous advice holds and:

'it therefore follows that the Council has the power as a general principle to provide funding to the Rape Crisis and Sexual Abuse Centre provided that Members have taken into account the above listed criteria. Furthermore Legal Services have advised that the vires for the Council being able to make the grant to this group derives from the provisions of S.108 of the Local Government Act (NI) 1972.

On the specific issue of whether the Council can provide funding to an organisation which appears to be in a position of insolvency, officer and legal advice would be that it would not be appropriate for the Council to put any more funding into that organisation. The rationale for that position would be that the provision of further funding to the organisation is like to be abortive in terms of achieving the Council's objectives. This advice would reflect the legal position which is clearly established by case law. Thus in relation to whether or not the Council can provide funding to this organisation in the context of its current financial position, Members should consider whether there is a realistic likelihood that the funding will assist the Council to achieve its particular objective ie the public's access to a professional counselling agency for victims of rape and sexual abuse. From the information available legal advice suggests that it would be difficult to make a further award of funding similar to that of October 2006. There may be an argument to provide a reduced amount of funding if there is a realistic prospect that financial assistance would assist with financial stability allowing the organisation to seek other funding.

In summary, there is presently no sustainable basis for the Council to accede to the Centre's request for advice funding in the amount applied for. Nevertheless if Members reasonably feel there to be a valid business case for doing so then Committee may consider recommending some limited form of assistance to the Centre subject to there being a realistic prospect that the outcome of that assistance will be a meaningful enhancement of the Centre's current difficult position.'