

By: Robert Gough – Cabinet Member Corporate Support Services and
Performance Management
Geoff Wild – Director of Law and Governance

To: Governance and Audit Committee Trading Activities Sub Group
1 December 2009

Subject: **REVIEW OF COMMERCIAL OPERATIONS**

Classification: Unrestricted

Summary: To report on the legal status of KCC trading activities post L.A.M.L

FOR INFORMATION

1. INTRODUCTION AND BACKGROUND

- 1.1 After the June 2009 Appeal Court decision in the LAML case, Peter Gilroy sought reassurance that KCC's trading operations were *intra vires* and not at risk of challenge.
- 1.2 LAML cast doubts over councils' ability to enter into partnerships, adopt arrangements for shared services, form and procure from joint ventures and the extent to which they were entitled to rely on their powers to promote or improve the economic, social or environmental well-being of their area, all raising the worry that the fear of *ultra vires* would return to haunt local government and those doing business with them.
- 1.3 The uncertainty created by LAML is particularly unwelcome after the Lyons report which recommended more innovative use of wellbeing powers, and councils' (in particular KCC's) increasing appetite to use them.

2. GOVERNMENT ACTION

- 2.1 There is light at the end of the tunnel, however. The Communities and Local Government Department has confirmed that:

“Councils are to be given new legislative powers to establish mutual insurance companies in light of the recent London Authorities Mutual Limited (LAML) court judgement..... Urgent new amendments have been laid on the Local Democracy, Economic Development and Construction Bill that will give 'best value' authorities legislative power to join together to set up and participate in mutual insurance companies.....The Government is determined to support councils who are identifying new efficiencies and innovative ways to make taxpayers' money work harder than ever.”

3. KCC ACTION

- 3.1 KCC Legal Services instructed James Goudie QC to give an opinion on some of KCC's trading activities.
- 3.2 The Opinion compared s2 of the Local Government Act 2000 and s95 of the Local Government Act 2003 together with the Local Government Power to Trade Order 2004 with the activities carried on by Kent Top Temps Ltd and Kent County Facilities Ltd and did not refer to anything irregular or improper.
- 3.3 Mr Goudie has advised that KCC could review its trading activities on a company by company basis. This can be done, and a further Opinion sought from counsel, if required; however, there is nothing to suggest that, on the basis outlined by Mr Goudie, any of the council's current trading activities are operating unlawfully, improperly or *ultra vires*.

4. RECOMMENDATIONS

- 4.1 Members are asked to note the report and comment on any further action required.

Lucinda MacKenzie-Ingle
Solicitor
Ext: 7000 6106

Background Documents: None