

**EIT Programme
Legal Services EIT Review
Baseline Report
2011**

1. Executive Summary

Legal Services has undergone a review as part of the Efficiency, Improvement and Transformation Programme. The review has concentrated on:-

- The provision of internal Legal Services
- The provision of external Legal Services
- The Local Land Charges Service

Monitoring Officer and Proper Officer functions are statutory functions and are the responsibility of the Director of Law and Democracy. Whilst the Director is supported in these functions by Legal and Democratic Services, they do not form part of this review except where such functions are mentioned in the context of the range of legal services provided.

2. Background

2.1 Legal Services Key Objectives

The Legal Service has 4 Key objectives:-

- To assist the Monitoring Officer in discharging the statutory duties of that office to secure compliance with the law and to promote high standards of conduct, ethics and probity
- To ensure the Council develops and implements appropriate strategies, policies and practices which enable it to meet corporate and service objectives that are lawful, ethical and accord with good governance arrangements
- To deliver an effective legal service which fulfils the Councils corporate objectives and service priorities, including, BSF/Capital Schools Programme, Safeguarding Children & Adults, Shared Service Arrangements, Partnerships, Joint Arrangements, PFI, Equal Pay & Employment, Education, Personalisation, Licensing, Planning, Property, Prosecutions, Regeneration and Highway Improvement Projects.
- To manage the Local Land Charges service

2.2 Local Land Charges

The Local Land Charges Service is a statutory function and is governed by the Local Land Charges Act 1975 and the Local Land Charges Rules 1977. It is a public facing service with three primary responsibilities:-

- The maintenance of the Local Land Charges Register
- Providing a response to an official search of the Local Land Charges Register and CON29 Property Information
- Facilitating public access to property search information in accordance with the Local Land Charges Act 1975 and the Environmental Information Regulations 2004.

The cost of the service is self funded by fees, except where the public are permitted to inspect information and statutory registers free of charge.

2.3 Approach

In undertaking this review Legal Services were mindful of the need to make savings that may benefit other service groups, particularly CESC where the demand for Legal

Services is continuing to increase. In terms of improvement and transformation, consideration has been given to linkages with other services, specifically debt recovery in Xentrall and Local Land Charges links with planning, GIS and Land Ownership Records.

As a support service, Legal Services are aware of the impact the service has on the delivery of the Council's key priorities and will often realign its resources to match Council objectives. The legal priorities for 2011/12 are:-

- Achieving a balanced budget
- Safeguarding
- Delivering regeneration projects and the Schools Capital Programme

The review has used the following approved methodology:-

Theme	Key Questions
Baseline	What service is being reviewed and how is it provided?
	What influences impact on the service?
	What resources does the service use?
	What does consultation tell us about the service?
Evaluation and Findings	Is the service needed, what is statutory, what level of service is needed?
	What options are there for changing the way the service is delivered?
	Benchmarking – how does the service perform, is it cost effective?
	What does inspection tell us?
	Who are the customers and what impact would the changes have on them?
	What is the likely demand for these services in the future?
Options Appraisal	How else could it be provided?
	What is the impact of stopping the service?

2.4 Baseline

2.4.1 Medium Term Financial Plan

The resource allocation for Legal Services excluding the Director of Law and Democracy and Local Land Charges is £822,088. A target efficiency saving of 15% amounts to £123,313. The service has an existing budget gap (currently funded by a managed surplus) of £99,055 therefore total savings of £222,368 are required in respect of the existing budget gap and to achieve a further 15% saving.

The Legal Services expenditure budget is predominately employee costs (93%).

The managed surplus will be used by the end of 2012/13 leaving an annual pressure of £99k. This pressure is the result of the historical gap between funding and inflation and also because Legal Services no longer receives funding from the corporate JE/Equal Pay budget which closed, resulting in a reduction of £65k to the Legal Services budget.

Efficiency savings have been made to balance the MTFP budget and to deliver the Head of Service savings by removing the following posts:-

Trainee Solicitor	19,924
Legal Assistant	29,323
Land Charges Officer	24,173
Clerical Assistant P/T	<u>9,455</u>
	<u>82,875</u>

Further efficiency savings of £38,731 have been made by a change to a post and a reduction in hours. This can be utilised to bridge the budget gap from 2014/15.

The current position is:-

Legal Services MTFP 2011/12

Net Budget Position (as per MTFP)	1,038,179
Less Cost of Director of L&D	<u>- 117,036</u>
	<u>921,143</u>
Funded by Resource Allocation	<u>882,088</u>
Budget Gap	<u>99,055</u>
Legal Services Savings Target	99,055
Legal Services MTFP budget Gap	
Net	921,143
Less support service recharges	<u>64,725</u>
	<u>856,418</u>
EIT 15% target	123,313
Total savings required	222,368
Less identified savings	<u>38,731</u>
Savings to be identified	<u>183,637</u>

2.4.2 Internal Legal Services

The scope and detail of the Legal Services work is shown at appendix 1. The main priorities are:-

Safeguarding

Legal services comprise a total of 28 employees of which 7 officers are dedicated to the delivery of children and adults social care legal work. This includes child protection, which forms the bulk of the work, adoption, leaving care services, children in need, mental health, learning disability and other community care responsibilities. The Legal Service covers advice and litigation in individual cases in the Family Court, Court of Protection and Tribunals and also covers wider issues of advising on legal responsibility in service provision and the development of policies and procedures. Specific legal advice is provided in respect of the EIT reviews being undertaken in CESC this covers employment, TUPE, equality and compliance with statutory duties. The Legal Services Team is also called upon to liaise with the Court in respect of private law family cases which may require reports and services from CESC. In addition, the team assist with issues in respect of confidentiality and disclosure of information. A significant part of this work involves disclosure of confidential social services records in criminal proceedings concerning child abuse cases.

The scope and extent of legal support associated with adult social care has increased, particularly in the areas of transformation of adult social care including personalisation and direct payments and issues arising from the implementation and amendment of the Mental Capacity Act 2005 such as services and decision making for adults who lack capacity and deprivation of liberty. A growth in this area of work is anticipated following developments in a growing body of caselaw giving guidance as to how the act should work in practice which emphasises the responsibility of Local Authorities to seek the authority of the Court of Protection in a variety of situations.

Alongside those issues the team continue to provide legal advice and support in the areas of residential and domiciliary care, ordinary residence, mental health, community care services for asylum seekers and protection of vulnerable adults. Increasing challenges can be predicted by way of actual or threatened judicial review in a climate of changing and reducing services. Changes to community care legislation proposed by the Law Commission in May 2011 are expected including an Adult Safeguarding Board. Changes to the National Health Service involving increasing responsibilities for local authorities are currently being considered by Parliament in the Health and Social Care Bill. These changes involve responsibility for public health functions, scrutiny responsibilities and the creation of Health and Wellbeing Boards.

The Team have experienced a significant increase in child protection cases. There are currently 83 cases in court, compared with 68 cases this time last year. There are an additional 16 cases where proceedings are being prepared. This reflects an increase in child protection within CESC and the level is not expected to reduce in the

foreseeable future. Legal advice and support for the child placement panel has increased correspondingly. In the area of child protection a government review of family law is expected to be completed before the end of 2011.

It has proved necessary to realign existing legal resources to manage the increase in cases and to seek temporary additional funding from CESC of £16k to fund a temporary increase in hours for a part time Senior Legal Assistant.

Regeneration

Regeneration is one of the Council's key priorities and there are a number of projects ongoing or proposed in the short to medium term. Housing regeneration schemes at Mandale, Hardwick and Parkfield are ongoing and the schemes at Swainby Road and Victoria are commencing. Other regeneration schemes, such as Stockton Town Centre, Riverside Road improvements and North Shore have also commenced.

Such schemes require the acquisition of properties by agreement, advice in respect of the funding and procurement processes, development agreements and ensuring the schemes progress despite a difficult financial climate and (where necessary) the exercise of compulsory purchase powers. At least four potential compulsory purchase orders are required to progress housing regeneration schemes and the regeneration of Stockton Town Centre.

There has been a general increase in the more complex property transactions, partly as a result of the asset management review and the need to maximise income. As a result some complex property matters have been dealt with by external solicitors at a higher cost. To help to address this, a part time Senior Legal Assistant post has been changed to a full time Assistant Solicitor post.

Whilst the housing stock transfer has resulted in the removal of right to buy transactions, there has been a marked increase in the repossession of former right to buy properties and subsequent requests regarding the repayment of discounts, or the writing off of the discount and pre-emption rights.

Section 106 Agreements have increased as a result of the adoption of the core strategy and planning enforcement matters have also increased.

Challenges to decisions of the Council are also increasing, resulting in two judicial review cases in the last 9 months and 2 further cases that are anticipated. These are often costly and extremely time consuming, thereby increasing the pressure on Legal Services.

There has been an overall increase in the scale and complexity of projects, which provide targeted financial support for regeneration or require the development of solutions to support the needs of local businesses within the challenging economic climate. For example EU funded schemes (Nifco), project funding such as the Globe Theatre,

Tees White Water Course and support to local businesses through the proposed town centre financial assistance / loan scheme.

Legal services plays a pivotal role in bringing projects such as these to fruition through the development of innovative solutions, structuring of projects to ensure that outcomes are realised, whilst at the same time mitigating risk to the Council by guarding against potential breaches of EU rules on State Aid and public procurement.

Corporate, Statutory and Regulatory Duties

Legal Services support the Monitoring Officer in maintaining legality of the Councils actions, minimising maladministration and maintaining high standards of conduct ethics and probity. The Head of Legal Services is Deputy Monitoring Officer. Proper Officer functions are the responsibility of the Director of Law and Democracy and in his absence the Chief Executive although reliance is placed on the Head of Legal Services to deputise for the Director in respect of Proper Officer duties due to the legal implications of such functions

Solicitors provide legal and procedural advice at Committees, Panels and meetings of the Council. Attendance at certain meetings by a qualified lawyer with relevant experience and knowledge of the subject matter is a requirement of legislation and/or guidance, e.g. planning committees and child placement panels, or as a result of the complexity of the matter and to oversee the decision making process.

Regulatory work includes a number of criminal prosecutions each year. There has been an upward trend in relation to prosecutions, particularly with regard to fixed penalty notices for schools non-attendance cases and fly tipping. There has also been an increase in the complexity of cases concerning counterfeit goods and more recently defective building work. The number of prosecutions over the last three years is:-

2008/09	33
2009/10	69
2010/11	120

These figures include the additional fly tipping offences which were generated as a result of the enforcement service targeting fly tipping in the borough. In order to manage the increase in prosecutions for these offences temporary additional funding of £12k was provided by DANS. This temporary funding will come to an end on the 31 March 2012.

There has also been a steady increase in the number of licensing committees. The full licensing committee considers the full range of licensing functions but tends to deal mainly with taxi licensing matters. Sub-Committees are arranged to hear applications under the Licensing Act 2003 and the Gambling Act 2005. A Sub-Committee must be arranged if there are any representations from responsible authorities or objectors. Nationally and locally there has been an increase in the number of reviews of licences which are, in the main, brought at the request of the police. The figures for licensing committees over the last three years are:-

Full Committee

2008/09	10
2009/10	12
2010/11	16

Sub-Committees

2008/09	15
2009/10	13
2010/11	20

Employment matters continue to require a considerable amount of legal input due to the number and effect of EIT reviews and redundancies. There are approximately 60 equal pay claims in the Employment Tribunal and a significant number of compromise agreements have been concluded by Legal Services. In 2009/10 there were 22 compromise agreements concluded, in 2010/11 this rose to 55 and so far this year 40 compromise agreements have been concluded.

Another growth area is the number of education admission appeals, the figures for the last three years are:-

2008/09	20 appeal dates and 112 appeals
2009/10	21 appeal dates and 176 appeals
2010/11	34 appeal dates and 292 appeals

Legal Services have also been requested to assist external academies with their admission appeals which have been accommodated in order to general extra income.

Litigation work includes dealing with ASBO's, bankruptcy proceedings, empty dwelling management orders, Enterprise Act proceedings and appeals to both Magistrates Court and the Crown Court. Appeals against sentence or conviction have also increased.

Public Procurement and Contract work has also seen an increase over the last few years, both in relation to the number of contracts entered into and the number of challenges brought to procurement decisions. It is anticipated that the increase in workload will continue to rise, especially as council services will continue to require flexibility in the approach to procurement and in the scope of contracts awarded in order to reduce costs but at the same time ensuring standards are maintained or improved

The potential for an increase in legal challenges to procurement decisions is a particular risk issue as amendments to the Public Contracts Regulations which came into force on 1 October 2011 will force failed bidders to commence legal proceedings more quickly than had previously been the case.

The number of contracts sealed or signed over the last three years is as follows:-

	2008-09	2009-10	2010-11
Contracts sealed	89	102	155
Contracts signed	75	45	93

Legal Services provides a significant part of the Council's overall approach to debt recovery. The legal service encompasses initial advice through to judgments and enforcement. We undertake all methods of enforcement including charging orders and insolvency action and also defend actions brought against the Council.

As a consequence of the current financial climate referral of debts for legal action are increasing. In the last financial year alone debts recovered through Legal Services exceeded £200,000.

In considering whether savings can be made in the debt recovery process one issue for the Council is the overall cost of pursuing debt. Xentrall services currently monitor payments and issue reminder notices to debtors. Non payment results in the transfer of the case to legal services for recovery action. There may be scope for recovery action to be taken by Xentrall services, however in order to recover legal costs (Solicitors Costs) the legal aspects of the debt recovery work must be carried out by qualified legal officers. Recoverable costs (fixed fees prescribed by the Ministry of Justice) vary in each case but on average will be between £60 and £100 per debt, this income would be lost if the recovery were carried out by a department directly or through Xentrall.

Fluctuations in work loads and the pressures in child protection, property, prosecutions, employment and education admission appeals have been managed by temporary additional resources from CESC and DANS totalling £28k which will come to an end on the 31 March 2012, and by changing a part time Senior Legal Assistant post to a full time Assistant Solicitor post. Some employees have also experienced changes in roles and duties in order to deliver the service in house and minimise reliance on external legal services. The flexibility and ability of legal employees to work across a number of different service areas remains a priority.

2.4.3 External Legal Services

The use of external Legal Services is divided between Solicitors and Barristers. External Solicitors are used for major projects to supplement the capacity and skills of the in-house team. Barristers are used for specialist advice and advocacy in the Magistrates, County and High Court and also for Tribunal Proceedings and Public Inquiries. External Solicitors and Barristers fees are paid by the relevant service group. The Legal Services budget excludes external legal fees.

The cost of the external legal service in 2010/11 was £470k. This is higher than in previous years and includes work on the following major projects:-

- Building Schools for the Future - Dickinson Dees Solicitors
- Housing Stock Transfer – Anthony Collins Solicitors
- Health PFI – Ward Hadaway Solicitors

The majority of Barrister fees relate to child protection proceedings. The last two years have seen an increase in such fees due to the increase in the number of cases issued in Court. There has also been an increased reliance on Barristers for equal pay claims and other employment matters. Judicial Review proceedings have also resulted in more expenditure on the use of Barristers. A procurement exercise for Barristers will be considered in the evaluation section of this report.

2.4.4 Local Land Charges Service

The Local Land Charges service has seen fluctuations in the number of searches over the last 3 years:-

Standard Searches

2008/09	1426
2009/10	1102
2010/11	1378

Personal Searches

2008/09	3076
2009/10	3280
2010/11	1386

The reduction in personal searches is mainly as a result of the abolition of the Home Information Packs. The Land Charges service is now operated by 1 full time land charges officer with support and cover from 2 legal assistants when necessary and not 2 Land Charges Officers as previously.

The service is self funded by fees and regulations require that the income from fees should not exceed the cost of providing the service.

Some search information is contained on statutory registers and can be inspected free of charge. Requests can also be made under the Environmental Information Regulations 2004 to inspect information in situ free of charge. Environmental Information requests must be responded to as soon as possible and no later than 20 working days and is a similar system to Freedom of Information requests. The Local Land Charges service has introduced a discretionary service for personal search companies who wish to gain access to information quickly and to avoid having to inspect the information in situ. The cost of this service does not exceed the cost of its provision.

The Local Land Charges service is an electronic service operated through the IDOX software. This is the same system used by planning

for the public access system and GIS in respect of the Gazetteer. Given that the Local Land Charges service has linkages with both the planning system and GIS an exercise is being conducted to review all the Council's spatial data sets to ascertain whether further efficiencies can be gained by increased automation of the land charges service.

2.5 Influences

The main influences on the service can be summarised as increases in work and the complexity, a reduction in resources and changes in legislation. There is the opportunity to increase income by performing work for outside bodies but this cannot be maximised without additional resources.

The service has already reduced its resources by 15% by not filling vacant posts and early retirements, however the reliance on Legal Services has increased, both in relation to internal Legal Services and external Legal Services. The need to seek temporary additional resources from CESC and DANS in order to manage the increase in child protection work and fly tipping prosecutions is a reflection of the reduced ability of the team to satisfy increases in work loads.

Priority continues to be given to child protection work, the number of children taken into care has reached record levels both nationally and locally. With 83 cases in Court and 16 cases pending, and a prediction that the level is not expected to reduce in the foreseeable future, the temporary additional funding may need to be made permanent, otherwise there is a possibility that the work may need to be outsourced at a much higher cost. Support Services to the Child Protection Team also need to be increased in order to manage the large volume of Court Bundles that are required for each hearing and updated on a weekly basis.

Due to the number of EIT reviews there is no short term solution to the number of employment issues and forthcoming hearings in respect of the equal pay claims that will require priority over the coming months.

Regeneration work will continue at Mandale, Parkfield, Swainby Road and Victoria in respect of housing regeneration in addition to Stockton Town Centre and North Shore. Regeneration is a key priority for the Council and the cost of external solicitors is becoming prohibitive. Reforms to the planning legislation and policy are proposed, including the revocation of all existing 25 national planning policies and replacement with one policy. The Localism Bill also proposed changes which will impact on the planning service and require additional support from Legal Services, for example, the ability of Parish Councils to adopt neighbourhood plans, which the Local Planning Authority is obliged to assist with. Proposed changes to the planning system also results in frequent consultation documents.

The transformation of the Health and Social Care legislation will add further pressure on the internal Legal Service. It is expected that over 40 statutes will be consolidated into 1 and a number of changes are proposed to bring the law up to date and to simplify the process for adult social care. It is expected that an adult safeguarding board will be set up and that new duties will be placed on Local Authorities in respect of carers and service users.

As a result of the housing stock transfer the Legal Services Team no longer deal with Right to Buy transactions and the abolition of the Standards Board

may result in a reduction in work with regard to conduct issues and complaints, however, this represents a small proportion of the work performed by Legal Services and has been largely overtaken by increases in other areas of work therefore the benefit of any reduction has not been felt.

The increase in challenges to council decisions by way of Judicial Review is also causing pressure on the team since these cases are by their nature very time consuming and costly. Judicial Review applications therefore compound the problem and reduce the ability of the Legal Services Team to maintain or deliver services in other areas.

A report on the use of consultants and specialist contractors has identified the £470K was spent on external legal services last year. This was a result of BSF, Housing Stock Transfer and work on a Health PFI. Due to the reduction in government spending this figure is unlikely to be repeated in 2011/12, although the cost of Barristers fees is expected to rise. The schools capital project has a relatively small budget for internal and external fees therefore it is likely that the in house service will need to perform most of the work in house and ensure the project is delivered according to project timescales This may require a further realignment of internal legal resources.

The local land charges service has found it difficult to compete with personal search agents and whilst the personal search agents previously held approximately 70% of the market there has been a marked change and the ratio last year between the use of the Councils full search service and the personal search service was 50:50.

Personal search agents are pursuing litigation to recover personal search fees paid to all local authorities due to access to search information being free if inspected in situ under the Environmental Information Regulations. Therefore there is the added pressure of automating access to all the Councils property search information to minimise the cost of providing free access to information. The government has provided new burdens funding of £34K to help offset the loss of income and to help pay for any refund of fees. The outcome of the litigation may result in changes to the way in which property information is maintained by local authorities and to access arrangements by search companies and the public.

The Police Reform and Social Responsibility Act received Royal assent on 15 September 2011. The Act includes a number of provisions to change the licensing regime governing supply of alcohol and regulated entertainment. Although we have no definite implementation date for the changes it is likely that they will be implemented some time next year. The proposed changes indicate that there could be an increase in workload for the Licensing Committee. The Act includes making the Licensing Authority a responsible authority which would allow the licensing section to be more proactive in dealing with problem premises. The Act also proposes making Primary Care Trust's and Local Health Boards a responsible authority. Responsible authorities are empowered to make comment on all licensing applications or request reviews of premises which are deemed to be undermining the licensing objectives. The Act also removes the 'vicinity' test for persons to make a representation about a premise. At the present time to make a representation or request a review a person needs to reside or conduct their business within the vicinity of the premise. The Act removes the 'vicinity' test thus giving the ability for more persons to make representations on premises and applications. If representations are received and not withdrawn they must

be referred to Licensing Committee for a hearing. It is likely that the proposed amendments in the Act will lead to an increase in workload for the licensing section, Committee and legal officers.

The coalition Government also proposes a new strategy for tackling fraud and error in welfare benefits and a commitment has been given to establish a Single Fraud Investigation Service (SFIS) from 2013 to investigate fraud and benefits and tax credits. The new SFIS will be formed by consolidating the benefit/tax credit fraud investigation teams across Department for Works and Pensions (DWP), the Local Authority and HMRC. At the moment the proposals for how the SFIS will operate are out for consultation. There is little or no indication for how criminal prosecutions would be undertaken but if it is centralised under the SFIS it is likely that they would undertake their own prosecutions. Over the last few years there has been an increase in referrals from the Benefits Service and should the plans proceed as expected then legal services may not be responsible for benefit prosecutions.

2.6 Consultation

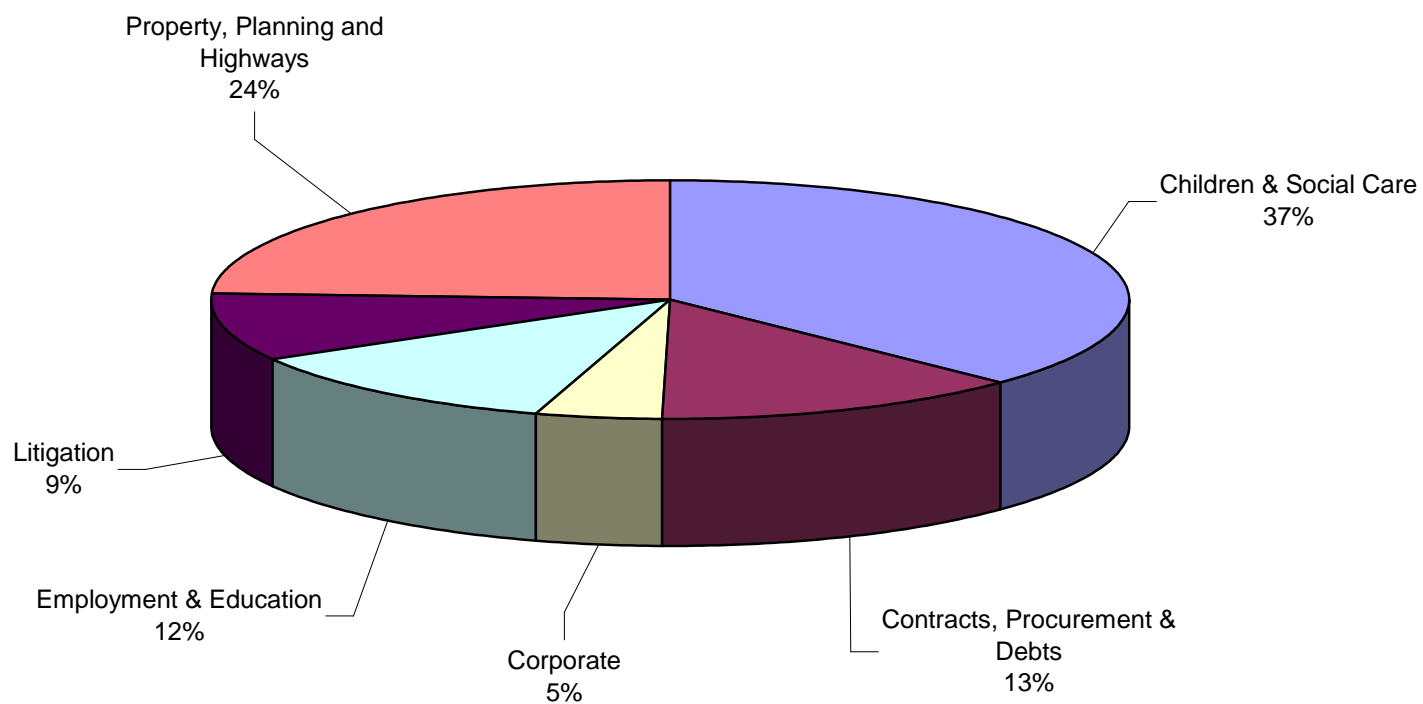
Legal Services meet with each main service group management teams on a six monthly basis to discuss performance and service delivery issues. This provides an opportunity to plan for any major projects and to ensure that Legal Services can realign its resources to meet service priorities.

Feedback from consultation meetings is generally positive and the Legal Services Team continues to provide an excellent service. A number of commendations and compliments are received each quarter.

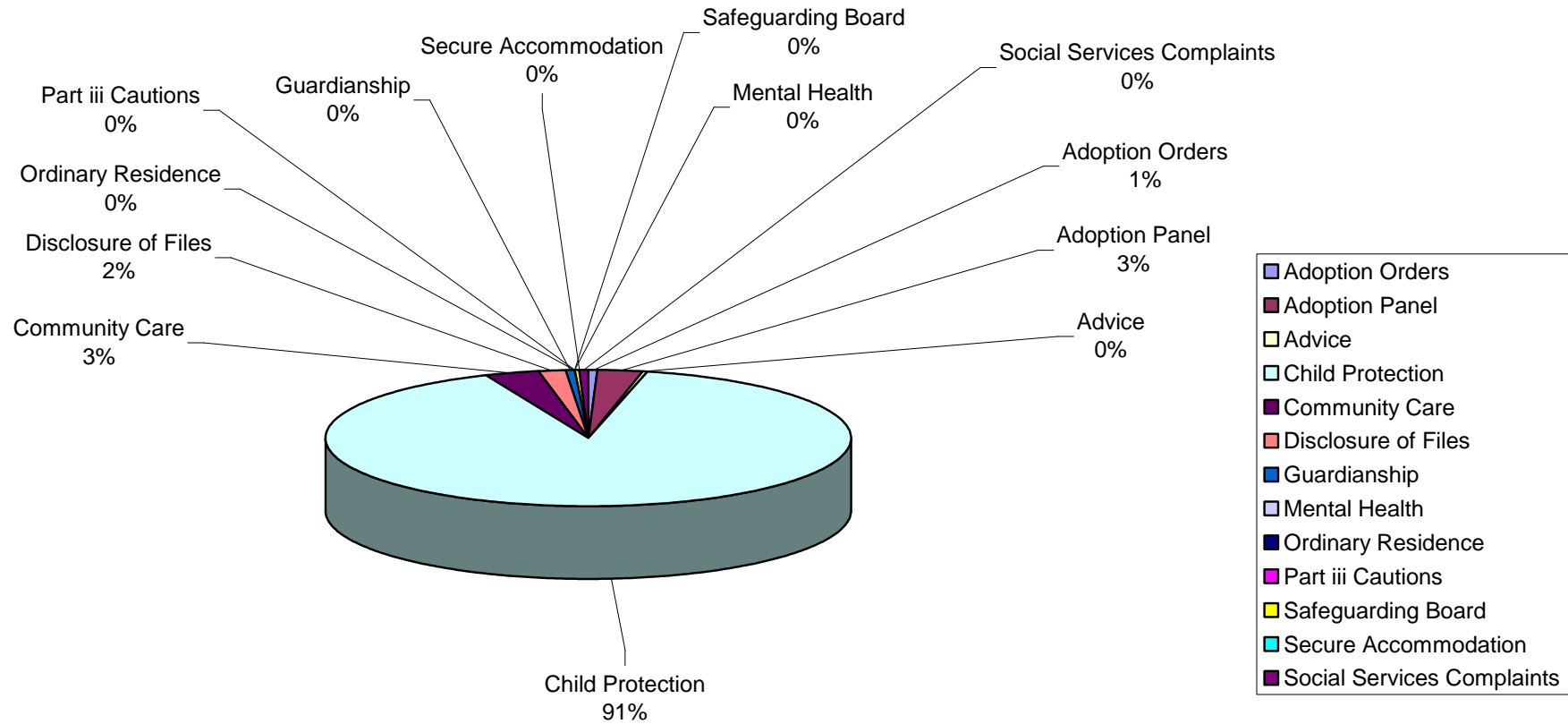
More recently there has been careful monitoring of child protection cases and the Director of Children, Education and Social Care is aware of the pressure on Legal Services in this area of work and has allocated temporary additional resources to minimise any delay in the issuing of proceedings. This will continue to be monitored as the number of cases increase, it is likely that the temporary resources will need to be made permanent and that further resources may be necessary if cases continue to increase as expected.

Legal Services Work Types 2010/11

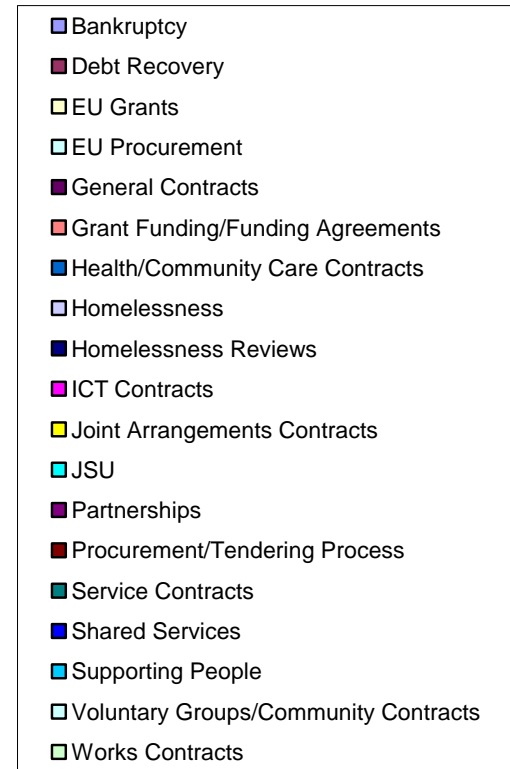
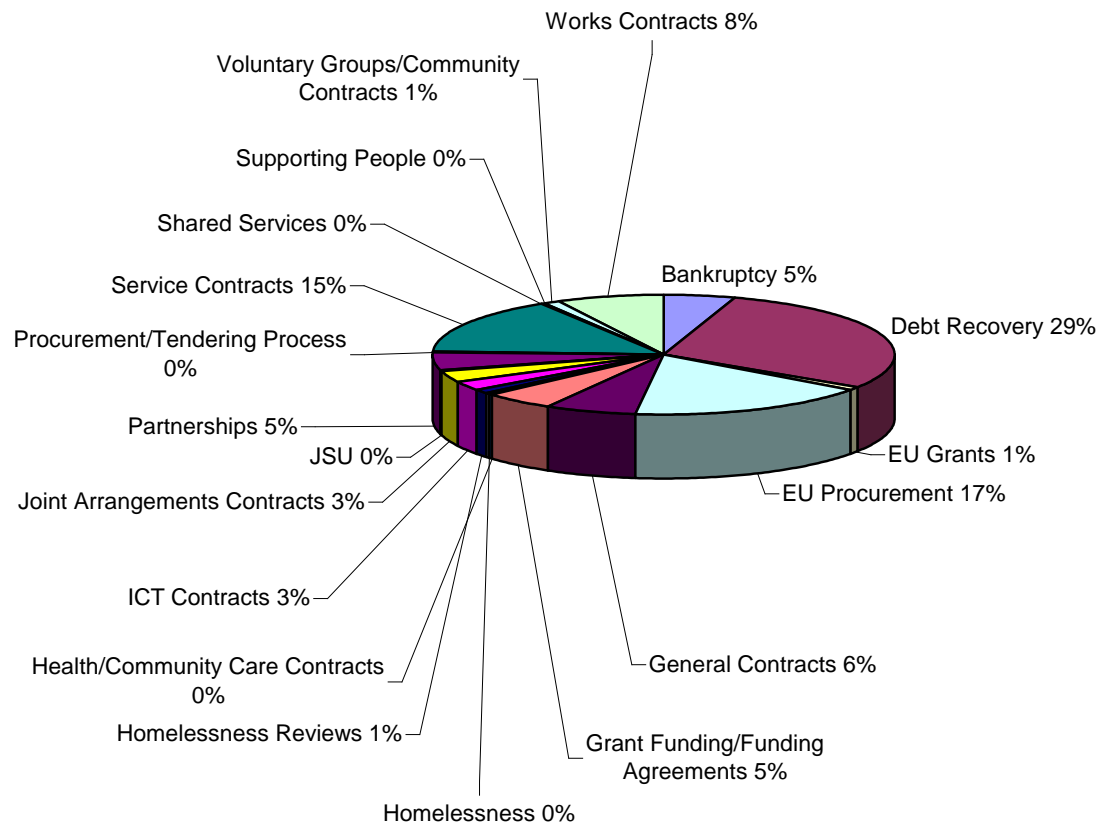
■ Children & Social Care ■ Contracts, Procurement & Debts ■ Corporate ■ Employment & Education ■ Litigation ■ Property, Planning and Highways



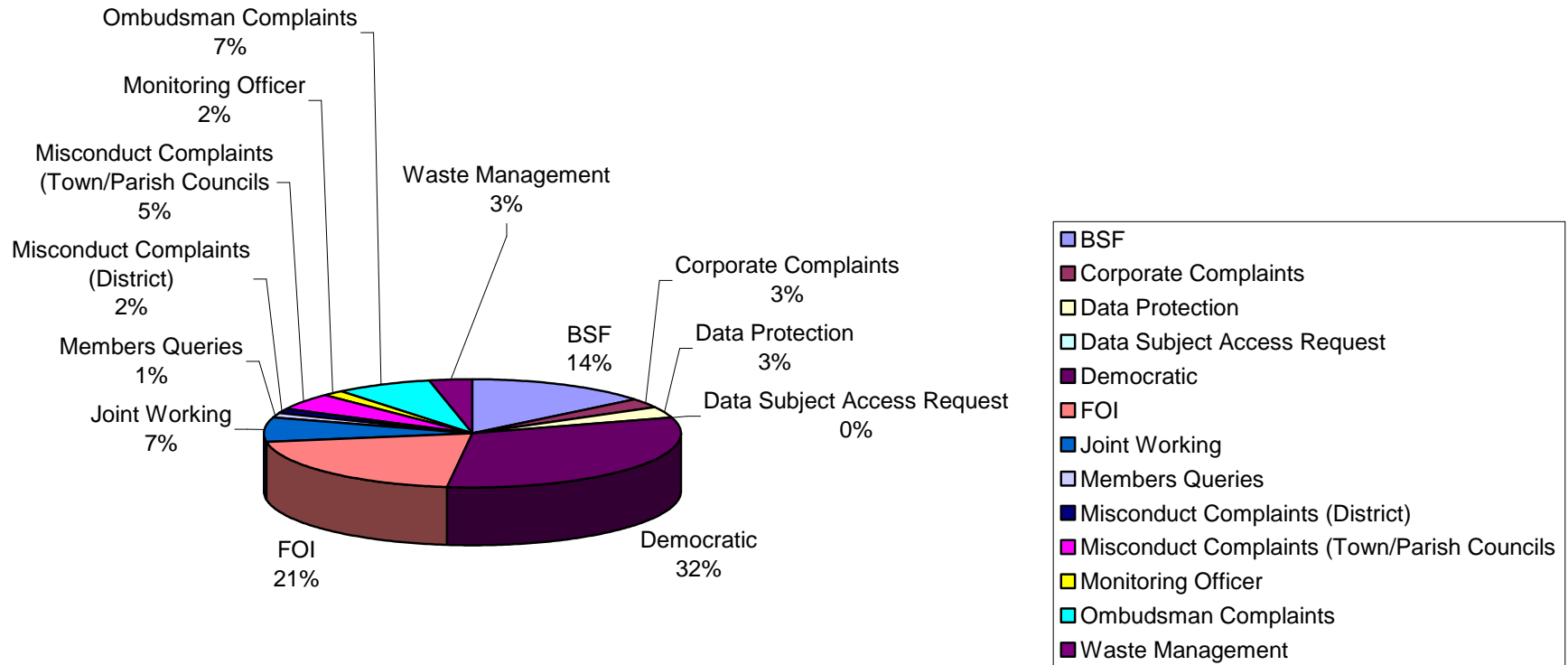
Children & Social Care 2010/11 (HM)



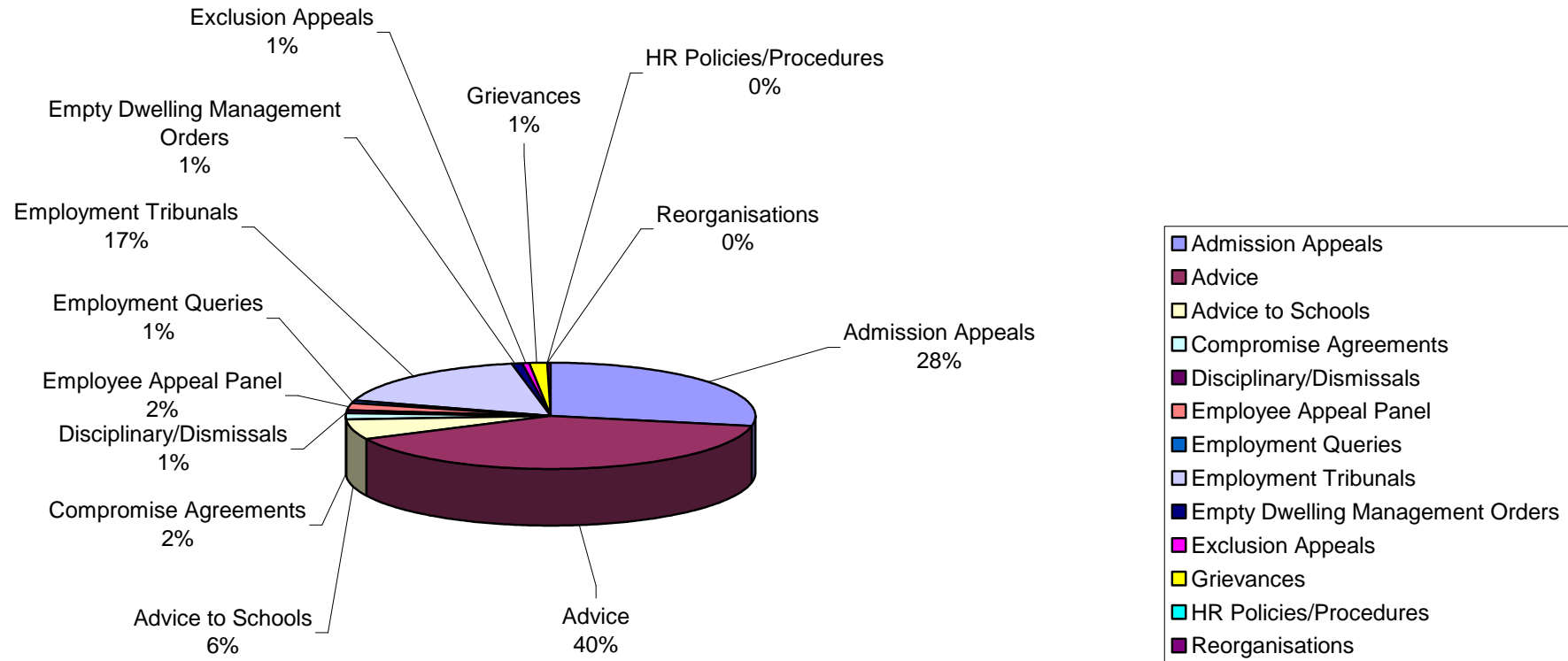
Contracts, Procurement & Debts 2010/11 (H:M)



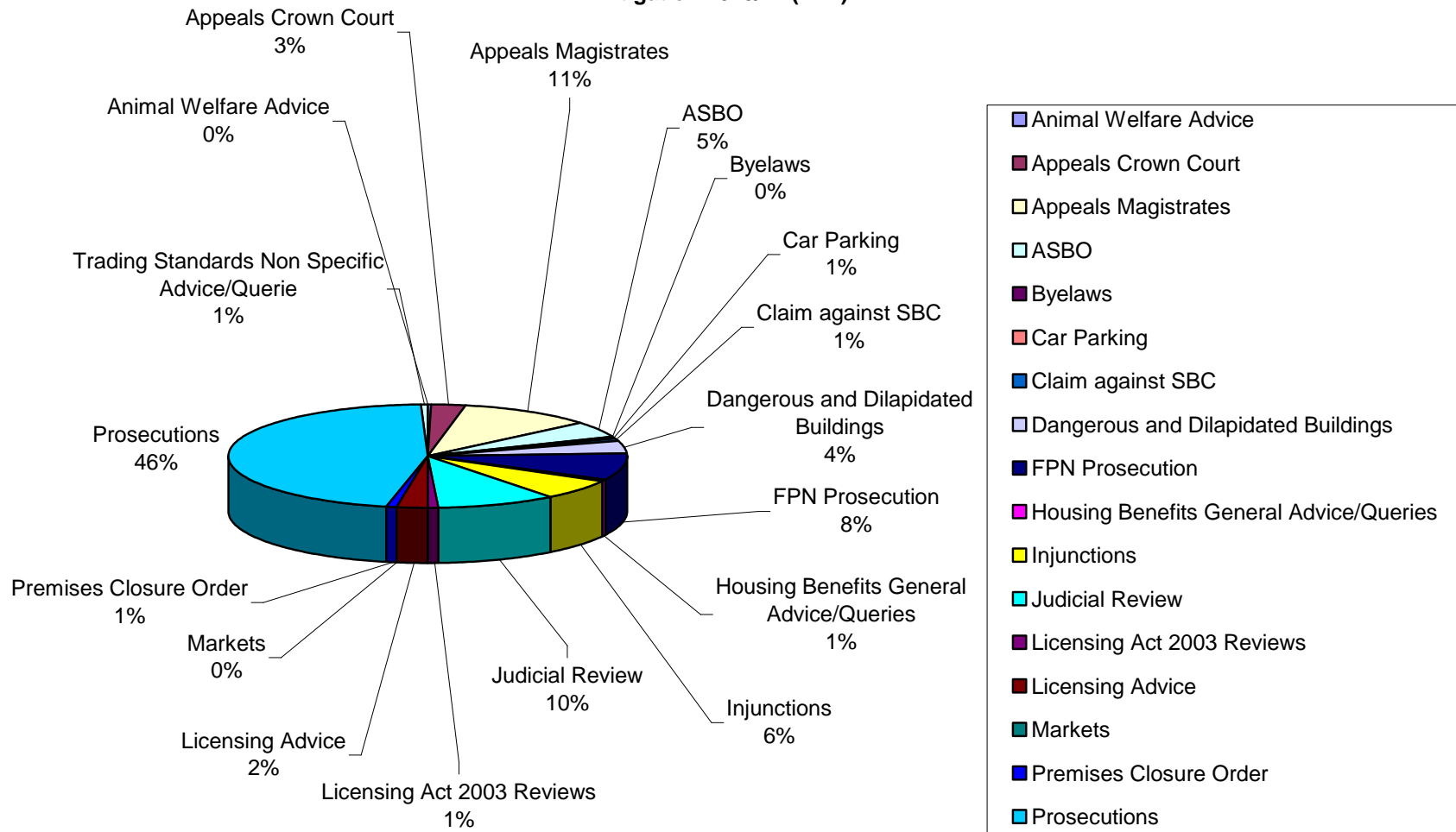
Corporate 2010/11 (H:M)



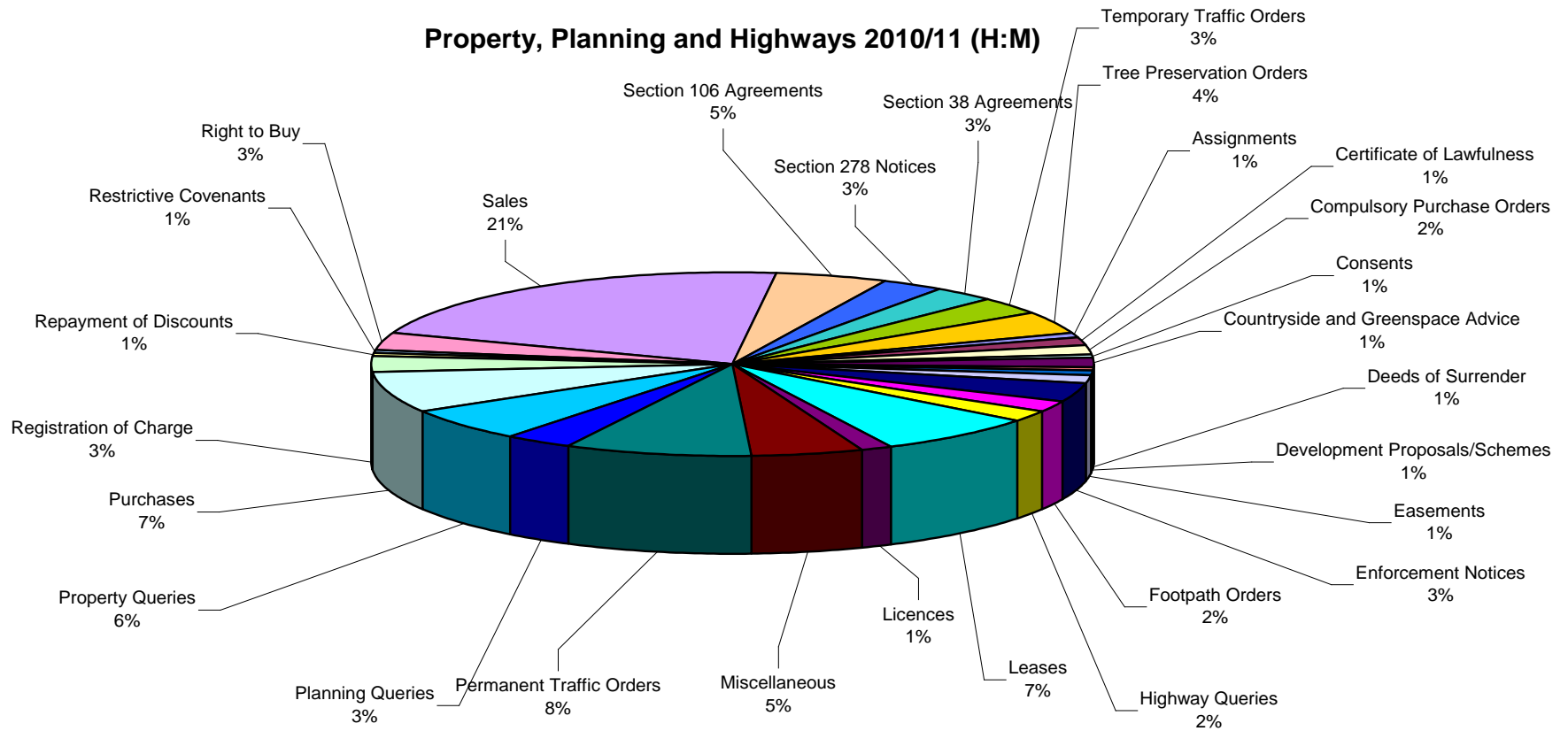
Employment & Education 2010/11 (H:M)



Litigation 2010/11 (H:M)



Property, Planning and Highways 2010/11 (H:M)



Assignments	Certificate of Lawfulness	Compulsory Purchase Orders	Consents
Countryside and Greenspace Advice	Deeds of Surrender	Development Proposals/Schemes	Easements
Enforcement Notices	Footpath Orders	Highway Queries	Leases
Licences	Miscellaneous	Permanent Traffic Orders	Planning Queries
Property Queries	Purchases	Registration of Charge	Repayment of Discounts
Restrictive Covenants	Right to Buy	Sales	Section 106 Agreements
Section 278 Notices	Section 38 Agreements	Temporary Traffic Orders	Tree Preservation Orders

*Misc includes:- Allotments, Blight Notices, Boundary Disputes, Deed Variation, Deed Postponement, Faculty, Gating Orders, Grave Space Deeds, Hardwick & Parkfield Queries, Listed Buildings, Rent Review, S215 Notices, S6 Agreements, Stop Notices, Title Advice, Traffic Calming, Voluntary Registration, Adverse Possession, Building over Sewer Agreements, Mandale Queries, Mortgage Redemptions