

CABINET

19 DECEMBER 2019

REPORT OF THE PORTFOLIO HOLDER FOR ASSETS AND FINANCE

THE ESTABLISHMENT OF A SHARED LEGAL SERVICE FOR THE PROVISION OF LEGAL SERVICES TO TAMWORTH BOROUGH COUNCIL

EXEMPT INFORMATION

None

PURPOSE

To seek Cabinet approval for the establishment of a Shared Services Agreement with Lichfield District Council and South Staffordshire District Council.

RECOMMENDATIONS

It is recommended that Cabinet:

1. Approves the establishment of a shared legal service with South Staffordshire District Council and Lichfield District Council, with South Staffordshire District Council being the 'Host Authority'.
2. Delegates authority to the Cabinet Member and the Executive Director Organisation to approve the Strategic Partnership Agreement.
3. Request staffing implications associated with this report are considered by Appointments & Staffing Committee
4. Delegates authority to the relevant budget holder to vire the identified budgetary amounts as detailed in Appendix 4.

EXECUTIVE SUMMARY

The Council requires reliable access to legal advice that is available when we need it and at a cost that represents value for money. Until February 2019 the Council employed its own in-house solicitor as the Head of Legal and Democratic Services, who, as well as providing advice, also oversaw the instruction of external lawyers including barristers. The Head of Service position has been vacant since February. Since then the Council has obtained legal advice on an interim basis from a range of providers including Staffordshire County Council, and South Staffordshire Council's legal team as well as a range of external lawyers. South Staffordshire is also providing a similar service to Lichfield District Council.

In the meantime the Council has reviewed the way in which it obtains legal advice and how it could do so in the future.

There are a number of ways in which the Council can obtain legal advice. The Council could, for instance, employ its own in-house legal team; allow officers to obtain their own advice as required; procure and retain on a corporate basis its own principal lawyers or panel of lawyers; or collaborate with other Councils to share legal services.

Over the last few months the three councils have been exploring whether a shared legal service for the three partners is the best option. Tamworth and Lichfield are currently without in-house legal support, whilst South Staffordshire has grown its legal team in recent months.

All three councils have similar requirements for legal support and all three incur similar levels of annual spend on law.

This review has also had implications on the staffing structures for Democratic Services, Land Charges/Right to Buy as well as Elections. Details of those changes will be subject to consideration by the Appointments and Staffing Committee but all associated costs for those changes are included in the financial summary at **Appendix 4**.

This report proposes the establishment of a formal shared service with South Staffordshire and Lichfield councils and describes how the partnership will work with particular reference to the way in which key officers can get legal advice quickly and effectively.

BACKGROUND

Throughout the year, the Council regularly seeks legal advice on a range of issues including:

- Planning – development management
- Planning – enforcement
- Planning – trees and conservation protection
- Planning – legal agreements including CIL/S106
- Planning – policy
- Advising Planning Committee both at meetings and in preparation
- Regulatory – including Licensing
- Advice on RIPA
- Property – right to buy/leases/minor disposals and acquisitions
- Local Government Law
- Election Law
- General contracts/procurement/commercial activity
- General advice including data protection and Freedom of Information
- Disrepairs/Warrants to gain access to properties/Probate issues
- Land registry
- Right to Buy and Disrepair Claims

In addition, the Council occasionally requires advice on:

- Complex commercial property
- Complex contract law
- Company law

In recent years, this advice has been provided by the Head of Legal and Democratic Services supplemented by advice from external legal firms and barristers. Since February 2019 when the post became vacant the Council has used the services of the legal team of initially Staffordshire County Council and then South Staffordshire District Council. In addition, legal support/advice has been procured from a range of external providers to support technical committees, planning and property issues, Right to Buy and Disrepair Claims.

A summary of the areas for legal demand is attached at **Appendix 1**.

Options for Obtaining Legal Services

There are a number of ways in which the Council can obtain legal advice. These include:

- A centralised approach by employing our own in-house Solicitor and Legal Team
- A devolved approach by allowing Heads of Service to retain their own advisors
- A collaborative approach by creating a shared service with other like-minded Councils
- A complete out-sourcing approach either by commissioning another Council to provide our legal services, or
- Procuring and appointing a principal legal advisor or a panel of legal providers from the private sector

These 5 options including their advantages and disadvantages are discussed in the background document at the end of the report (**Appendix 2**).

A number of key objectives were considered important in assessing the different options. These objectives included:

- The ease in which officers can obtain legal advice
- Reliability and quality of advice
- An understanding of the requirements of the Council
- Resilience
- Cost certainty and value for money
- Ease of procurement

The Preferred Option

A Shared Service with South Staffordshire & Lichfield Councils

The Council has been working with colleagues from South Staffordshire and Lichfield councils to explore the potential for a shared service. This option is preferred for the following reasons:

- It provides efficient access to reliable legal advice
- There is greater cost certainty
- It can provide a team of solicitors that understand local government, in particular district council, with specialisms in law that are in most demand by us
- It allows officers, if they have a preference, to ask that specific external lawyers are instructed
- There are economies of scale that will help reduce the costs of procuring external lawyers
- There is greater resilience in that we are not reliant on one individual solicitor
- There will be a greater oversight in the quality and cost of legal work
- There are greater opportunities for promoting and embedding best practice
- There is increased opportunity to ensure that all officers are able to access good quality, timely legal advice
- There are more prospects to standardise certain processes, (for example the preparation of S106 Agreements, property leases or road closure applications), across three councils thereby reducing the cost to the public purse and improving the customer experience.

The principles of the Shared Service will be based on the following:

- All partners to be equal albeit South Staffordshire Council will be the Host Authority as they already employ a team of solicitors
- The partnership to operate in accordance with a Strategic Partnership Agreement
- Five year initial term but dissolution before end of the term can be either by mutual consent or within 12 months' notice by any party
- The partnership to be governed and monitored by a tri-partite Governance Board comprising a senior officer, 'Lead Client', from each partner. In the first instance, this would be the Executive Director Organisation from this Council
- The partnership to be branded to differentiate it from the Host Authority and to ensure that partners feel that they have equal ownership

- The team to have specific specialisms to complete work in-house including local government, elections, planning, property, regulatory and contract law
- South Staffordshire Council to procure external legal advisors, including barristers, as required by the partnership/clients
- External advice will be sought when the team does not have the expertise or capacity or where there is conflict or where the client requests specific external advisors
- Fixed costs of the team to be shared equally between the three parties
- Variable costs (ie. the costs of external advice) to be met either from a partnership budget equally funded by the partners or from the partner specifically requiring advice
- No partner will pay more because more of their routine work is contracted out rather than being completed in-house
- Work to be managed through a case management system to allow for full transparency
- Caseload to be reviewed regularly to ensure quality and progress
- Expectation that all legal work from all three partners will go through the partnership
- Team will be available to 'clients' by telephone, email and in person at frequent 'surgeries' and for case meetings
- Team expected to be able to 'hot desk' at partner offices and to attend committee meetings as required.

However, as part of this option it is recognised and accepted that South Staffs do not currently have expertise in housing disrepair claims and as such, this work will continue to be provided by Bromsgrove and Redditch. There are currently 10 on-going disrepair cases being dealt with. Further development of this option will require legal technical support from South Staffs to ensure continued value for money from Bromsgrove and Redditch.

Consultation

There has been ongoing consultation and collaboration with South Staffordshire District Council and Lichfield District Council. Lichfield District Council considered the proposal and approval was granted on 12 November. South Staffs Cabinet also approved the proposal at their meeting on the 28 November.

Members of the Corporate Management Team as well as other officers who regularly require legal advice have also been consulted.

RESOURCE IMPLICATIONS

The implications associated with this proposal will have an impact on staffing levels within both the Democratic Services and Elections Teams. A summary of those implications is attached at **Appendix 3** and will be required to be considered by Appointments and Staffing Committee should this report be approved.

FINANCIAL IMPLICATIONS

It is estimated that the Service will have the following annual costs:

Item	£pa
Employees	244,000
Subscriptions	17,100
External Lawyers	90,000
Host Authority direct overheads	3,900
Total	355,000
Income from third parties	(25,000)

Contributions from 3 Councils	(330,000)
Total	(355,000)

The Council's contribution will be £110,000 pa. This can be funded from existing budgets from across a number of different service areas.

It is intended that each Council will contribute £30,000 to fund the costs of external lawyers including barristers.

It is anticipated that this budget will be sufficient to fund the vast majority of legal instructions by the three Councils.

But there will be occasions where a Council will require significant legal input, say to support a Local Plan Inquiry, a major outsourcing contractor or a food prosecution that will cost more than is available in this budget. In consequence, the instructing Council will be asked to fund these additional costs but the Service will support the commissioning of external lawyers.

In addition, it is anticipated, given the current number of housing disrepair matters being dealt with by Bromsgrove and Redditch Council that the annual spend with them will be approximately £5,500 per annum or roughly £392 per file per year.

In terms of the TBC's previous spend and how this proposal will be funded -details are attached at **Appendix 4**. Annual costs have varied because of major projects or cases progressing at the time. Such cases have included, for instance, major planning inquiries/judicial reviews, outsourcing contracts such as leisure management, or joint venture agreements with developers.

LEGAL/RISK IMPLICATIONS BACKGROUND

The Partnership Governance

The Shared Service will be governed by a Strategic Partnership Agreement (**Appendix 5 refers**) between the three parties. This Agreement is similar to other shared service agreements and is currently with independent legal advisors (Telford and Wrekin Council) for comment.

The Partnership will have a Governance Board comprising senior officers (the Lead Client) from each council. The Governance Board will oversee the work of the partnership, monitor quality, work load and costs. It will also seek and respond to feedback on the quality of the service from clients in each of the councils.

Service standards that client officers can expect together with operating guidelines have also been scoped (**Appendix 6 refers**).

In addition to legal advice, the Service will also be expected to provide other services including:

- Training for Members and Officers on legal matters including planning, data protection etc
- Best practice advice and legal updates
- Access to subscriptions to case law
- Knowledge transfer so that officers can adapt advice to future similar cases
- A move to standardise our approach to legal and regulatory processes across the three councils. Such processes may include preparation of S106 agreements or road closure

applications.

It is recognised that the team will not be able to undertake all instructions received whether because of capacity, capability, conflict or the requirement from a client for a specific individuals or firm. In consequence, the Service will have protocols for instructing external lawyers – whether that be solicitors or barristers. There will be an expectation, though, that all requests for legal advice are made through the Service such that the best procurement routes can be used, that spend on legal services can be monitored and that the quality of service received can be managed.

It is intended that, if approved, the Shared Service will commence on 1 January 2020.

A copy of the associated risk document is attached at **Appendix 7**.

NEXT STEPS

If Members are supportive of the proposal set out in this report and given the timescales for implementing this arrangement, Members are requested to give delegated authority to the Executive Director Organisation, in consultation with the Portfolio Holder for Assets and Finance to take the necessary practical, financial and legal actions required to enable the arrangement to be put in place effective from 1 January 2020.

REPORT AUTHOR

Anica Goodwin, Executive Director Organisation ext. 225.

APPENDICES

- Appendix 1 – Summary of Legal Demand**
- Appendix 2 - Options Considered**
- Appendix 3 – Summary of Staffing Implications**
- Appendix 4 - Financial Implications**
- Appendix 5 – Draft Shared Service Agreement**
- Appendix 6 – Operating Guidelines**
- Appendix 7 - Risk Assessment**