

Options Considered for the Provision of Legal Services

There are a number of ways that a Council can obtain legal advice but as part of this work five different models have been selected and their advantages and disadvantages identified and appraised.

The five options are as follows:

1. Employ an in-house Solicitor and/or Legal Team
2. Allow Directors/Assistant Directors/Heads of Service to appoint their own legal advice as they require
3. Develop a shared service with other like-minded Councils or Partners
4. Commission legal advice from another Council
5. Procure and appoint a principal legal provider and/or appoint a panel of legal providers.

Of course these are options that are not mutually exclusive – they can be combined in a multitude of ways but for ease of comparison they have been separated.

Option	Advantages	Disadvantages
1. Employ in-house legal team	<ul style="list-style-type: none"> • Advice available within office • Informal advice can be obtained more easily • Can employ legal specialisms relevant to council (eg., planning or regulatory) • Employment costs are known • One central point for requesting legal advice • External legal advice is procured by in-house legal client • Capability for co-ordinated commissioning of legal advice • Ability to have oversight of council's legal spend • Requires little internal promotion • Officers value advice at end of the corridor • Provision of corporate legal support/advice across a range of projects • Knowledge of ongoing issues/ history is retained • Additional senior manager resource 	<ul style="list-style-type: none"> • Advice only available when officer is present • Recruitment and retention risk • Will still need to retain external legal advice for complex, transactional advice • Expectation that solicitor will contribute to the corporate management of the organisation • Restricted access to a second opinion • Easier for officers to suspend their own decision making until have checked it with solicitor • Employment costs, overheads and obligations • Limited/no business continuity/resilience • Position works in isolation and therefore post holder could become overworked – impact on work life balance • Full recruitment process would be required • Appointment would potentially be at top of grade • Specialism would probably only be in one or maybe two areas • Workload could be too diverse
	This is the model that has previously been used by this Council. We have been incurring average annual costs of approximately £170,000 over the	

	<p>last 3 years on external advice in addition to employing a Solicitor.</p> <p>Because the number of in-house solicitors will be limited, advice can sometimes be cursory, and there is still a reliance on external lawyers. Furthermore, there is little resilience should the lawyer be unavailable, and there are few opportunities to develop good practice or secure value for money. The Council was previously unsuccessful with trying to recruit to the vacancy.</p>	
<p>2. Directors/Assistant Directors & Heads of Service appoint own advisors</p>	<ul style="list-style-type: none"> • Responsibility and accountability rests with Directors, Assistant Directors or Heads of Service • Teams retain own budgets • Direct leads can access legal advice from whomsoever and whenever they wish • Requires little internal promotion 	<ul style="list-style-type: none"> • No support provided to commission advice • Less corporate view of legal spend • Less ability to ensure quality of service • Less ability to ensure good providers/good contracts are shared with colleagues • Little prospect of economies of scale • Likely to be more expensive • Little cost certainty • Some heads may over-use advisors; some may choose to under-use • Control/frustration of more junior officers • Inconsistent approach • Learning not shared • Difficult to control spend • HR process to consult potential change to job descriptions – impact on job evaluation score/grade • Risk of procurement challenge as value of contracts increase
<p>It is difficult to assess the costs of operating this kind of model but it is easier to identify the risks and frustrations that will arise that lead one to conclude that this isn't a sensible proposal to pursue.</p> <p>Whilst Directors, Assistant Directors and Heads of Service might value the ability to commission their own legal advice and have it available as required, there is a real risk that we lose the benefits of a corporate approach to buying legal services.</p> <p>At present we commission external lawyers on either a fixed or hourly rate. Hourly rates for planning solicitors are approximately £130 compared with £55 per hour from another council.</p> <p>The purchasing of legal services will be fragmented and inconsistent. There will be little confidence that we get value for money, we don't use our total legal spend as a lever to generate additional value; as contracts aggregate there is a risk of breaching procurement rules, there is</p>		

	inefficiency in procuring; and there is no opportunity to learn corporately; and there is no client loyalty to the council as a whole.	
3. Shared service with like-minded councils	<ul style="list-style-type: none"> • Immediate access to advisors across a range of specialisms • Solicitors are focused on legal, rather than corporate work • Council can seek external advice as a legal client • Easier commissioning of external contracts via frameworks, existing agreements or tender • Greater negotiating power for external contracts • Resilience in levels of 'in-house' support • Centralised budgets and reporting provides greater corporate oversight • Reduces potential costs as legal advice for one council may also be relevant to others • Some cost certainty • Career progression opportunities • Buying power increased (economies of scale) • Risk management can be shared • Improved standards and consistency • Improved reporting and analytics • Common model for potential expansion • Agreed Service Standards • Shared vision • Less daily demand on Executive Director Organisation's time 	<ul style="list-style-type: none"> • Retention and recruitment challenges • Risk of one partner dominating the relationship • Requires careful contract/partnership management • Conflicts of interest between councils need to be managed • Requires extensive internal communication to ensure compliance with agreement • Will require some transfer of other non-legal budgets • Risk of one partner withdrawing • Needs robust agreement and operating procedures
	This is the preferred option	
4. Commissioning legal advice from another council	<ul style="list-style-type: none"> • Access readily available albeit at a distance • Some cost certainty • Access to different specialisms • Solicitors are not distracted by corporate management issues • Larger pool of legal advisors provides resilience • Easier access to frameworks, other agreements or other 	<ul style="list-style-type: none"> • Risk of other council withdrawing • Requires careful contract/partnership management • Conflicts of interest between councils need to be managed – trust might be an issue • Requires extensive internal communication to ensure compliance with agreement • Will need top-slicing of budgets

	<p>procurement exercises if commissioning external advice</p> <ul style="list-style-type: none"> • Share learning – what is produced for one council might be shared • Buying power increased (economies of scale) • Improved standards and consistency • Improved reporting and analytics • Agreed Service Standards 	<ul style="list-style-type: none"> • Needs robust agreement and operating procedures • Officers 'miss' advice at end of corridor • Council not always considered as a priority • Advice no focused on Council – Council will be one of a number of suppliers • Less chance to focus service on issues that matter to the Council
	<p>We have explored 2 such proposals in recent months from Staffordshire County Council and we are currently in a contract with South Staffordshire District Council.</p> <p>If work is completed in-house then hourly rates are cheaper than using external solicitors (we are currently paying £55 per hour) – but there is no guarantee that our work would be prioritised over the supplying council.</p> <p>Whilst the existing arrangement with South Staffordshire is good enough, it does not exploit the opportunities for transformation of the service and to identify and implement best practice as it is a transactional relationship.</p> <p>Note: This option will continue to be used for Housing Disrepair claims. RTB process currently supported by Birmingham City Council will also be reviewed in light of these proposals with a potential view to transfer over to South Staffordshire.</p>	
<p>5. Commission principal legal provider or establish panel of legal providers</p>	<ul style="list-style-type: none"> • Hourly rates confirmed • Access to quality legal advice • Access to a client partner to ensure request is dealt with by specialist lawyer • Get access to other benefits – training; meeting rooms; legal briefings 	<ul style="list-style-type: none"> • Need to undertake extensive procurement exercise • Contract led – so needs contract manager • Requires extensive internal communication to ensure compliance with agreement • Will need top-slicing of budgets • Likely to be very expensive • Might not be available at times when we need specialist advice – eg., elections • Likely to be needed from a number of partners rather than just one firm in order to cover the breadth of specialisms
	<p>The initial stage of establishing such a panel would involve an extensive – and costs – procurement exercise requiring a full specification of both routine and one-off requirements. The risk of not doing so properly could lead to significantly higher costs than specifying at the outset.</p> <p>The Council would also need to have an in-house contract manager, possibly a solicitor, to ensure that the work was being undertaken correctly</p>	

	<p>and that charges were appropriate.</p> <p>Although hourly rates will be confirmed, our recent experience of hourly rates for solicitors is £130 - £160 per hour.</p> <p>It is concluded that at this time, the Council does not have a mature enough understanding of its business to prepare the procurement for such a panel.</p>
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Executive Director Organisation

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