

The Establishment of a Shared Legal Service

Cabinet Member for Legal & Regulatory

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Key Decision? Yes

Local Ward None

Members

Lichfield
district council
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Cabinet

1. Executive Summary

- 1.1 The council requires reliable access to legal advice that is available when we need it and at a cost that represents value for money.
- 1.2 Until April 2019 the council employed its own in-house solicitor as the Head of Legal, Property and Democratic Services, who, as well as providing advice, also oversaw the instruction of external lawyers including barristers.
- 1.3 The Head of Service position has been vacant since April. Since then the council has obtained legal advice on an interim basis from South Staffordshire Council's legal team as well as from external lawyers. South Staffordshire is also providing a similar service to Tamworth Borough Council.
- 1.4 In the meantime the council has reviewed the way in which it obtains legal advice.
- 1.5 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.
- 1.6 Over the last few months the three councils have been exploring whether a shared legal service for the three partners is the best option.
- 1.7 Lichfield and Tamworth are currently without in-house legal support, whilst South Staffordshire has grown its legal team in recent months.
- 1.8 All three councils have similar requirements for legal support and all three incur similar levels of annual spend on law.
- 1.9 This report proposes the establishment of a formal shared service with South Staffordshire and Tamworth 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.

2. Recommendations

It is recommended that Cabinet:

- 2.1 approves the establishment of a shared legal service with South Staffordshire District Council and Tamworth Borough Council, with South Staffordshire District Council being the 'Host Authority'.
- 2.2 Delegates authority to the Cabinet Member for Legal and Regulatory and the Director of Transformation and Resources or the Head of Corporate Services to approve the Strategic Partnership Agreement.

3. Background

Our Requirements

- 3.1 Throughout the year, the Council regularly seeks legal advice on 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 & acquisitions
 - Local Government law
 - Election law
 - General contracts / procurement / commercial activity
 - General advice including data protection and Freedom of Information
- 3.2 In addition, the council occasionally requires advice on:
- Complex commercial property
 - Complex contract law
 - Company law
- 3.3 In recent years, this advice has been provided by the Head of Legal, Property and Democratic Services supplemented by advice from external legal firms and barristers.
- 3.4 Since April 2019, when the post became vacant, the council has used the services of the legal team of South Staffordshire District Council to both provide advice and to support the commissioning of external providers.
- 3.5 Our total net legal spend, including 60% of the costs of the Head of Service post (to reflect the approximate proportion of time the Head of Service spent on legal matters), over the last 4 years is as follows:

2015/16	2016/17	2017/18	2018/19
£160,989	£177,749	£202,881	£163,645

- 3.6 Annual costs vary because of major projects or cases progressing at the time. Such cases could include, for instance, major planning inquiries / judicial reviews, outsourcing contracts such as leisure management, or joint venture agreements with developers.

Options for Obtaining Legal Services

- 3.7 There are a number of ways in which the council can obtain legal advice. These include:
- 3.7.1 A centralised approach by employing our own in-house solicitor and legal team
 - 3.7.2 A devolved approach by allowing Heads of Service to retain their own advisors
 - 3.7.3 A collaborative approach by creating a shared service with other like-minded councils
 - 3.7.4 A complete out-sourcing approach either by commissioning another council to provide our legal services, or
 - 3.7.5 Procuring and appointing a principal legal provider or a panel of legal providers from the private sector.
- 3.8 These options including their advantages and disadvantages are discussed in the background document at the end of the report.
- 3.9 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; and ease of procurement.

The Preferred Option

A Shared Service with South Staffordshire and Tamworth Councils

- 3.10 The council has been working with colleagues from South Staffordshire and Tamworth councils to explore the potential for a shared service.
- 3.11 This option is preferred for the following reasons:
- 3.11.1 It provides efficient access to reliable legal advice
 - 3.11.2 There is greater cost certainty
 - 3.11.3 It can provide a team of solicitors that understand local government, in particular district councils, with specialisms in law that are in most demand by us
 - 3.11.4 It allows officers, if they have a preference, to ask that specific external lawyers are instructed
 - 3.11.5 There are economies of scale that will help reduce the costs of procuring external lawyers
 - 3.11.6 There is greater resilience in that we are not reliant on one individual solicitor
 - 3.11.7 There will be greater oversight in the quality and cost of legal work
 - 3.11.8 There are greater opportunities for promoting and embedding best practice
 - 3.11.9 There is increased opportunity to ensure that all officers are able to access good quality, timely legal advice
 - 3.11.10 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.
- 3.12 The principles of the shared service will be based on the following:

- 3.12.1 All partners to be equal albeit South Staffordshire Council will be the Host Authority as they already employ a team of solicitors.
- 3.12.2 The partnership to operate in accordance with a Strategic Partnership Agreement
- 3.12.3 Five year initial term but dissolution before end of the term can be either by mutual consent or with 12 months' notice by any party.
- 3.12.4 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 Head of Corporate Services from this council.
- 3.12.5 The partnership to be branded to differentiate it from the Host Authority and to ensure that partners feel that they have equal ownership
- 3.12.6 The team to have specific specialisms to complete work in-house including local government, elections, planning, property, regulatory and contract law
- 3.12.7 South Staffordshire Council to procure external legal advisors, including barristers, as required by the partnership/ clients.
- 3.12.8 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.
- 3.12.9 Fixed costs of the team to be shared equally between the three parties
- 3.12.10 Variable costs (i.e. 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.
- 3.12.11 No partner will pay more because more of their routine work is contracted out rather than being completed in-house.
- 3.12.12 Work to be managed through a case management system to allow for full transparency
- 3.12.13 Caseload to be reviewed regularly to ensure quality and progress.
- 3.12.14 Expectation that all legal work from all three partners will go through the partnership
- 3.12.15 Team will be available to 'clients' by telephone, email and in person at frequent 'surgeries' and for case meetings
- 3.12.16 Team expected to be able to 'hot desk' at partner offices and to attend committee meetings as required.

The Partnership Governance

- 3.13 The Shared Service will be governed by a Strategic Partnership Agreement between the three parties. This Agreement is similar to other shared service agreements and is currently with our own legal advisors for comment.
- 3.14 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.
- 3.15 Service standards that client officers can expect have also been scoped and shared.
- 3.16 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.

3.17 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 individual 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.

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

Alternative Options	Five separate options for retaining legal advice have been assessed. The advantages and disadvantages of each can be found in the background papers.
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Consultation	<p>There has been ongoing consultation and collaboration with South Staffordshire District Council and Tamworth Borough Council. It is expected that cabinet approval for this proposal will be granted on 12 November and on the 28 November respectively.</p> <p>There has also been extensive consultation with Leadership Team and with colleagues who regularly require legal advice. This consultation has focused on assessing legal requirements and service standards.</p>
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Financial Implications	<p>It is estimated that the Service will have the following annual costs:</p> <table border="1"> <thead> <tr> <th>Item</th> <th>£pa</th> </tr> </thead> <tbody> <tr> <td>Employees</td> <td>244,000</td> </tr> <tr> <td>Subscriptions</td> <td>17,100</td> </tr> <tr> <td>External lawyers</td> <td>90,000</td> </tr> <tr> <td>Host authority direct overheads</td> <td>3,900</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>355,000</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td>Income from third parties</td> <td>(25,000)</td> </tr> <tr> <td>Contributions from 3 councils</td> <td>(330,000)</td> </tr> <tr> <td>Total</td> <td>(355,000)</td> </tr> </tbody> </table> <p>The council's contribution will be £110,000pa. This can be funded from existing budgets from across a number of different service areas.</p> <p>It is intended that each council will contribute £30,000 to fund the costs of external lawyers including barristers.</p> <p>It is anticipated that this budget will be sufficient to fund the vast majority of legal instructions by the three councils.</p> <p>But there will be occasions where a council will require significant legal input, say to support a Local Plan Inquiry, a major outsourcing contract or a food prosecution,</p>	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)
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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.

Contribution to the Delivery of the Strategic Plan	The establishment of the shared legal service will support a council that is fit for the future.
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Equality, Diversity and Human Rights Implications	There are no implications identified.
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Crime & Safety Issues	There are no such issues identified.
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GDPR/Privacy Impact Assessment	The partnership recognises its GDPR obligations and is building in privacy by design into its work processes.
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	Risk Description	How We Manage It	Severity of Risk (RYG)
A	No commitment from partners	Both other partners are demonstrating commitment to the idea of a shared service and are investing both officer and member time.	Green
B	Procurement challenge	Legal advice confirms that we are permitted to develop such a partnership	Green
C	A partner subsidises the others' legal work	The Governance Board will keep oversight of caseload and costs to ensure that the contributions made by each partner are broadly equitable. But it is recognised that in some years, one partner may benefit more than the others.	Yellow
D	Recruitment issues	The team is at full complement presently having recently added two solicitors.	Green
E	Staffing issues	The team will be managed in accordance with the Host Authority's processes and policies	Green
F	Client dissatisfaction	The Governance Board will ensure that the case book is being managed in accordance with the quality standards. The Governance Board will also seek client feedback for the purposes of continuous improvement.	Yellow
G	Dispute between partners	The relationship between the partners is currently good but of course this cannot be guaranteed in the years ahead. IN consequence the partnership will have a formal shared service agreement (for which we will have sought independent legal advice).	Yellow
H	Poor conflict management	The management of conflicts will be in accordance with the process outlined	Green
I	Team is given workload beyond its capacity	The Lead Lawyer will oversee the workload of the team and individual lawyers. The Governance Board will provide additional oversight to ensure that workload is appropriate	Green
J	Bad advice given	The team will observe their professional standards but the Host Authority will maintain Professional Indemnity Insurance.	Green
K	Individual council officers do not use the service	There will be an expectation that all legal work is first discussed with the service. It does not prevent a client requesting a particular solicitor or barrister but procurement and instruction must be through the team.	Yellow

L	Costs increase	The fixed costs are unlikely to increase significantly but costs might increase because we require more advice. The service is not budgeted to provide for more complex requirements such as for a major project so legal costs must still be incorporated into the budgets of major initiatives.	Yellow
I	Team is unable to cope with workload / urgent instructions	Lead Lawyer to take responsibility for managing work programme and ensuring that all instructions are dealt with according to their priority – Urgent / Immediate / Routine.	Yellow
J	Council incurs additional costs on dissolution of the shared service	The Strategic Partnership Agreement describes how, if in the event of dissolution of the shared service, redundancy or pension costs will be shared amongst the partners apportioned according to the duration of the shared service.	Yellow
K	One party wishes to leave	The SPA will allow for a party to give 12 months' notice to withdraw from the arrangement. This will allow the other parties to make alternative arrangements.	Green

Background documents

[Options – advantages and disadvantages of different models](#)

Relevant web links