

FUTURE OF LEGAL SERVICES

Councillor N Blake

Leader of the Council and Cabinet Member for Resources

1 Purpose

- 1.1 To agree the future operating model for Legal Services to the council.

2 Recommendations

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| 2.1 | To note the update regarding a Teckal Legal Firm |
| 2.2 | Agree the approach set out in the report to the provision of legal services to the Council, and delegate the sourcing and detailed decision to the Chief Executive in consultation with the Leader. |

3 Executive summary

- 3.1 At its December 2014 meeting Cabinet agreed an 'in principle' change to the way in which legal services will be delivered to the council. This report provides an update to the work set out in December, and sets out the preferred route for the delivery of legal services.

4 Background

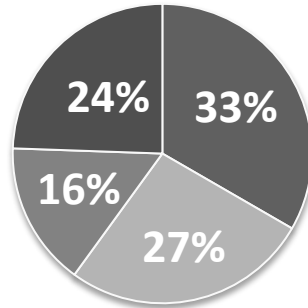
- 4.1 The supply of appropriate and timely legal advice is fundamental to the smooth running of many of the Councils services. It is also a costly element of support services. This has led to the consideration of options for different delivery models being explored as with all services under the New Business Model workstream.
- 4.2 Since 2012/13 the costs of the service have been reduced from c£742,000 to c£500,000, a reduction of almost a quarter of a million pounds.
- 4.3 There are currently 3.6 FTE in the legal service team (2.6 legal and 1 support staff) with additional support being brought in through locums and other external suppliers. The current arrangement is in place to enable the council to be ready to change its model of delivery easily, and also to 'trial' services provided through third parties. One of the existing members of staff is leaving the council during the next few weeks leaving us with a 1.6 FTE legal and 1 support staff.
- 4.4 At the December meeting of Cabinet a 'decision in principle' was taken to enter into a partnership model of delivery subject to an acceptable business case by the partners.

Level of Service Required

- 4.5 During the development of the business case we have assessed the level of legal support the council needs. The work has both assessed the demands on the service, and the requirements of internal customers set within the principles of the Councils New Business Model. As such we have employed a demand management approach to the requirements for legal services. The outcome of this work is shown in summary below.

Demand for Legal Services

■ Planning ■ Estates/Property ■ Council Business ■ Remainder



- 4.6 The work shows that AVDC has a need for between 4-5 FTEs to satisfy the needs of the council. Which is equivalent to a further saving of c £150-200,000 bringing the cost of day to day legal provision to c£300-350,000 per annum. This is based on accepting, as currently, we will need to bring in expert external advice to deal with unusual or complex cases.

Business Case for Partnering for Legal Services

- 4.7 As part of the option appraisal and business case work we have considered the following models of delivery for the legal service :
- Own staffed Service
 - Shared with another council
 - Procured from a third party (be that a commercial provider of a company developed for the purpose)
 - Hybrid of retained and procured
- 4.8 These were explored in more detail in the December 2014 Cabinet Paper and are not rehearsed in this report.
- 4.9 At the December 2014 meeting Cabinet made a 'decision in principle' to explore a business case for a shared model of delivery through a company. Since that time we have been working with partners to develop a business case that would be acceptable to all.
- 4.10 The business case is based on a teckal company¹ based shared legal service between Adur & Worthing and AVDC, with facilitation and support from iESE. This novel approach to delivering legal services means the local authorities will remain the owners of the company, will be driving the business case and will be in complete control over its strategic direction, whilst benefitting from the pooling of resources, to be economically efficient and resilient. The ethos is a not for profit-organisation and very much a public body
- 4.11 The business case envisages a company with around 10 employees, 2 of which would be business focused, and the reminder different grades of legal staff (solicitors through to paralegals). For the company as a whole – supplying services to Adur & Worthing and AVDC, the business case

¹ Based on the case of *Teckal Srl v Commune di Viano* (1999), the Teckal exception allows a public authority, in specified circumstances, to procure direct from an external company in which it has control similar to that which it exerts over its own departments. If the company satisfies the Teckal criteria, the procurement will be outside of the rules

concludes an annual running cost of around £500,000 per annum, with a c£250,000 one off set up cost.

- 4.12 Unfortunately whilst acceptable to AVDC in principle, the business case was not supported by our potential partner.
- 4.13 From the AVDC perspective, the business case could still be supported. However this would need us to find an alternative partner in a suitable position. This would take some time to achieve, and hence leaves the council with reconsidering the options for delivering a viable legal service again.
- 4.14 The table below sets out the current summary position on each of these :

Option		Commentary
A	AVDC Staffed Service	<p>The staffing level has been reduced to 2.6FTEs, with the remaining posts being serviced by locums and third parties.</p> <p>Bearing in mind the challenges faced by the council in future years budget positions, the consideration of unitary council (and hence different skills required), and the time and cost of reinstating staff we do not believe that this is a viable option to pursue.</p>
B	Shared with another Council (through Teckal or other route)	<p>Whilst this option remains the preferred delivery model, the amount of time and effort to find a potential partner, re-run the business case development with that partner, and the potential risk that this could again fail are too high at this stage.</p> <p>This is especially the case as we would have to continue to provide services in an interim arrangement in the mean time.</p> <p>Added to which the potential need for unitary services in the medium term, officers consider that this option is no longer viable to pursue at this point.</p>
C	Procured from a third partner	<p>As we now have a robust knowledge of our legal services demand, and have a limited number of staff in post, this would seem an ideal option to explore further.</p> <p>This approach would fit with the overall New Business Model approach of exploring different models of delivery that are cost advantageous to the council whilst retaining (and preferably bettering) the delivered service.</p> <p>This continues the spirit of the 'in principle' decision already made by Cabinet, albeit through a 3rd party rather than a shared service, and would enable a considerably more flexible approach to service delivery moving with the demands of the council as it changes due to the resource flexibility of a 3rd party.</p> <p>When the unitary council aspirations are also considered, and the potentially different legal service needs this might produce, there are a number of merits in considering this option further.</p>
D	Hybrid	<p>A combination of staffed service and third partner provider could be an alternative model of delivery. This is especially so as the currently retained legal staff are all in one</p>

		<p>discrete area of legal services (Planning), plus 1 support post.</p> <p>This would however make the procurement of the externalised element more complex; mean that retained staff may well have no or very limited progression opportunities; not be as resilient to service change demands; and be a more complex way of addressing a comprehensive legal service.</p>
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4.15 Based on the above summary analysis, and our more detailed understanding of our legal service demands we believe that a third party provider should be considered for the provision of legal services to the council. This may cover the entire or part of the legal services required by the council (ie Options C and D above), however if the entire service approach was taken, then TUPE would apply to existing staff.

4.16 Officers have been considering options for possible third parties and we believe that we have found an existing local government focused supplier who would be an appropriate provider. We have been using them for some time as part of the current arrangement, and believe at this stage that we will be able to procure them through an Inter Authority Agreement saving time and costs to put the arrangements in place.

Monitoring Officer

4.17 In addition to the legal staff per se the role of Monitoring Officer also needs to be considered. The Monitoring Officer has the specific duty to ensure that the Council, its Officers, and its Elected Councillors, maintain the highest standards of conduct in all they do. The main duties of the Monitoring Officer are set out below.

- To report on matters he/she believes are, or are likely to be, illegal or amount to maladministration.
- To be responsible for Matters relating to the conduct of Councillors and Officers.
- To be responsible for the operation of the Council's Constitution.

4.18 In order to ensure separation of roles, the Monitoring Officer may not also fulfil the duties of the Chief Finance Officer or the Head of Paid Service.

4.19 We believe that the best solution to this is to maintain an 'in house' Monitoring Officer, who will also act as commissioner of the 3rd party service. Until further work has been conducted it is unclear as to the level or nature (ie Full or Part time) this role needs to be. As such the principle of a Monitoring Officer/commissioner is included in this approach but the detail will need to be confirmed as the market exploration is undertaken.

5 Options considered

5.1 These are addressed in the report in summary, and in more detail in the December 2014 Cabinet report on Legal Services.

6 Reasons for Recommendation

6.1 To provide as efficient as possible legal service function, and to address budget pressures in future years. The 2015/16 Council Budget for legal personnel is £445,000, therefore sufficient funds are already available to fund the proposal as set out in the report.

7 Resource implications

7.1 These are covered in the body of the report.

Contact Officer
Background Documents

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December 2014 Cabinet Report – Legal Shared Service