

## Report to Cabinet

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<b>Title:</b>	<b>Future Legal Services</b>
<b>Date:</b>	Monday 25 March 2019
<b>Date can be implemented:</b>	Tuesday 2 April 2019
<b>Author:</b>	Cabinet Member for Resources
<b>Contact officer:</b>	Sophie Payne, Director of Policy, Performance and Communications, 01296 382463
<b>Local members affected:</b>	None
<b>Portfolio areas affected:</b>	Resources

*For press enquiries concerning this report, please contact the media office on 01296 382444*

### Summary

This paper sets out proposals for a new legal services business model for BCC to support the transition to a new unitary council for Buckinghamshire. This includes developing early shared arrangements with the district councils to deliver the county council's legal service requirements when its inter authority agreement with HB Public Law ends (from October 2019).

### Recommendation

#### Cabinet is requested to:

- i. **Agree to the implementation of the proposals set out in this report.**
- ii. **Delegate to the Executive Director for Resources, following agreement with the Cabinet Member for Resources, authority to execute an Inter Authority Agreement with the district councils and take any other necessary actions to give effect to the proposals.**
- iii. **Revoke the current delegations to the London Borough of Harrow for the discharge of the Council's legal function with effect from 30 September 2019, and delegate such authority thereafter in accordance with the new legal service model, including:**
  - a) **To delegate the discharge of the Council's legal function to the Head of Legal & Compliance;**

- b) To authorise the Head of Legal & Compliance to institute, defend or participate in any legal proceedings and sign documents on behalf of the council.

**A. Narrative setting out the reasons for the decision**

1. Buckinghamshire County Council (BCC) has been in a shared service arrangement with HB Public Law, London Borough of Harrow (HBPL) for the provision of its legal services since 2016. Due to changing circumstances (specifically, the move to a unitary council for Buckinghamshire), a decision was taken to develop a new approach aligned to priorities around local integration of support services. BCC's Inter Authority Agreement (IAA) with HBPL for legal services will therefore end on 30 September 2019.
2. A business case has been produced to set out the proposed legal service model for BCC from 1 October 2019 until 1 April 2020. This is attached as a confidential appendix. This is designed both to meet BCC's current legal service requirements and to maximise the potential for early integration and/or savings opportunities from the transition to a unitary council. Equally importantly, the model has been designed to ensure that arrangements do not preclude additional functions or staff being added or changed at a later date, in line with the Shadow Authority's decisions on future structures and operating models.
3. The proposals have been developed in collaboration with the professional leads for legal services across the district councils. The recommended approach in terms of sharing elements of provision has the support of the Chief Executives of all five existing councils; the district councils will take this through their own governance as appropriate following BCC Cabinet approval.
4. The following key principles have been used in considering future arrangements:
  - Ensuring continuity of critical 'business as usual' legal provision.
  - Providing a cost effective solution as well as increased flexibility and resilience during this period of substantial change.
  - Avoiding duplication of functions, staff and/or existing procurement arrangements with those already in place at the district councils, and being mindful of the need to minimise redundancies across all organisations during the transition to a unitary council.
  - Supporting the retention of specialist, hard to recruit staff by ensuring they are not subjected to avoidable/repeated disruption.
  - Enabling the alignment and sharing of roles and responsibilities, and joint systems of working to be established to ensure continuity of service provision at the handover to Buckinghamshire Council.
  - Maximising joint use of resources; adopting pragmatic approaches with a focus on minimising administrative costs.

**Scope of the proposals**

5. The principal areas of legal work in the scope of these proposals (BCC work that is currently provided by HBPL) includes:
  - Children's social care/education
  - Adult social care
  - Property, planning and contracts/procurement
  - Employment advice, litigation and pension appeals

- Corporate and governance advice.
6. BCC also retains a number of in-house functions which are not affected by these proposals:
- Monitoring Officer role (with legal support provided by the BCC Head of Legal and Compliance, who is also the contract manager for legal services)
  - Stage 2 complaints investigations
  - Schools appeals
  - Insurance claims.

### **Proposed model**

7. The proposed model is summarised below, with further details provided in the confidential business case appendix. Please note that this is effectively an interim model for BCC legal service provision from 1 October 2019 until 1 April 2020 (the anticipated creation of integrated support services under the new unitary council for Buckinghamshire). As set out above, it is designed to facilitate collaboration and maximise potential for early integration; noting that the design of any future legal service for the unitary council would be a decision for the Shadow Authority in due course.
8. The recommendation is for a hybrid model: an in-house team to provide children's and adult's social care legal work (since this is not available/replicated at district level); for the district councils to provide the other legal specialisms required by BCC; plus additional capacity and specialisms via external public and private specialist providers where appropriate.
9. Specifically, BCC legal requirements would be delivered as follows:
- **Children's Services provision:** An organised grouping of specialist staff is expected to transfer from HBPL to BCC under TUPE from 1 October 2019. This is a largely self-contained team, which has been physically located at the county council offices in Aylesbury both prior to and during the shared service arrangement with HBPL.
  - **Adult Social Care provision:** BCC to recruit staff with specialism in this area and share management and practice support arrangements with the incoming Children's team (on the basis that no staff are anticipated to TUPE transfer for this area of work, and there is no existing capacity/specialism at district level).
  - **All other provision (includes employment/litigation/governance; contracts/procurement; planning/property/regeneration; and practice support):** Provision through existing district council legal in-house teams, supplemented by recruitment (and the use of external providers where appropriate), to achieve the additional capacity needed. In practice this would mean Wycombe, Chiltern and South Bucks District Councils entering into an inter-authority agreement (IAA) with BCC from 1 October 2019 to 31 March 2020. The district councils would recharge costs for BCC work undertaken back to the county council.
  - There would be access to specialist / ad hoc advice through external providers/framework provision where appropriate, with the option to do this through the district councils' existing arrangements. Any external legal work would be agreed with BCC before proceeding and would make use of framework discounts wherever

possible (and in such instances there may be scope for limiting external spend by providing part in-house and part external advice to keep costs down).

- In addition, for some matters/cases which are already in train at the time of transition to the new service, it is anticipated that BCC will wish to commission HBPL to see these through to completion, where it makes sense to do so. This will be achieved through a revised IAA with HBPL.
- BCC expects to retain an interim Head of Legal and Compliance to provide oversight, monitoring and issue resolution across all legal services; as well as senior management for the children's and adult social care legal team. This is anticipated to be the case until an equivalent Head of Service is appointed for the new Buckinghamshire Council.

10. All recruitment to support the above model would be co-ordinated and managed across the five councils to minimise risk of over-provision and in line with existing HR protocols.

## B. Other options available, and their pros and cons

11. A number of other options were considered, and the suitability and strategic fit are summarised in the table below.

**Key – Analysis of suitability and strategic fit – Red, Poor: Amber, satisfactory: Green, good**

Criteria	As is: Retain current shared service	Establish an entirely in-house legal service at BCC	Join another existing public sector legal service	Establish mixed in-house and outsourced service	<b>(Recommended)</b> Mainly in-house, in collaboration with district councils
Fit with unitary agenda (avoiding duplication of district specialisms and staff, maximising potential for early integration)	Red	Red	Red	Amber	Green
Speed to implement	Green	Amber	Amber	Amber	Amber
Opportunities for staff	Amber	Green	Amber	Amber	Green
Certainty of cost reductions	Amber	Red	Amber	Amber	Amber
Disruption for lawyers during transition	Green	Amber	Red	Amber	Amber
Quality Assurance	Amber	Amber	Amber	Green	Green
Certainty of outcome	Green	Amber	Amber	Green	Green
Cost of legal support to BCC	Amber	Red	Amber	Green	Green
Risk of redundancies	Green	Amber	Amber	Green	Green
Risk to service delivery / continuity	Green	Amber	Amber	Green	Green
Future service resilience	Green	Amber	Green	Amber	Green

Flexibility to respond to changes					
Ability to control costs and external spend					

12. Financial modelling has also been undertaken on all the above options to confirm that the recommended approach is cost-effective and affordable within existing budgets. Details are included in the confidential business case appendix.

### C. Resource implications

#### *Investment costs*

13. The estimated investment costs of the proposed service model (one-off set-up costs) are £148-£181k.

14. BCC has made budget provision for the above costs of change as follows:

- a. The Capital costs will be funded from the existing capital programme budget
- b. The Revenue costs will be funded from an existing reserve within Resources, which has been ring-fenced for transformation projects.

15. In addition, existing staffing resources within BCC (for technology, accommodation and finance support) have been made available to support the project, and will not incur additional costs.

16. Please note that work will also be required to establish whether there will be any pensions liabilities from staff transferring back to BCC from HBPL; however these calculations cannot be provided until a later date.

#### *Ongoing costs*

17. The cost of the proposed service model is expected to be lower than current levels of legal expenditure within the council, and therefore within the FY2019/20 budget approval by Council in February. The exact value of any savings will be dependent on whether we need to recruit further additional staff to meet demand (for example, if there are any staff leavers over the coming months or changes to the forecast balance of caseloads).

#### **Indicative costs for the proposed service model for full year 2019/20: £2.54 million**

18. The above figure is based on six months of existing provision (April - September 2019) and six months of the proposed model (October 2019 - March 2020); it excludes disbursements/external costs (barrister fees, court fees and other incidental legal expenses), which are estimated at an additional £1,090,000 per annum based on historic spend.

19. The funding for the ongoing service and disbursements/external costs will be met from existing budgets which are embedded within Business Units across the Council.

20. Full details of the mechanisms for charging and monitoring the service provision will be developed and included in the Inter Authority Agreement between the county and

district councils. This will involve process mapping with BCC and district finance colleagues, to ensure an administratively efficient approach and to avoid financial detriment to the district councils. As set out above, BCC has made provision for the cost of change; if for any reason we find there are impacts which were unforeseen, the councils will work together to resolve the financial implications.

21. A breakdown of the above costs and background assumptions is included in the confidential appendices to this report.

#### **D. Value for Money (VfM) Self Assessment**

22. This proposal offers value for money through combining the expertise of staff across the current councils to produce a legal service that will maintain or increase current levels of service, while containing BCC's legal costs. In addition, the approach will mitigate against later redundancy costs for the unitary council, by avoiding duplication of legal staff across the county and district councils.

23. The proposal would also ensure any external legal income produced on BCC's behalf (e.g. from planning and highways agreements) remains in-house within the Buckinghamshire councils and can be reinvested for the new unitary council. Please note however that the business case takes a conservative approach i.e. the figures include no specific income projections.

#### **E. Legal implications**

24. There is an established legal basis for the recommended approach:

- i. Under section 1 of the Local Authority (Goods and Services) Act 1970, local authorities have power to enter into an agreement to provide professional and technical services to another public body. This allows the district councils to provide legal services to BCC and gives a wide discretion to include appropriate terms in relation to payment and other relevant matters, in an inter-authority agreement.
- ii. Local authorities have a wide discretion under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate or is conducive or incidental to the discharge of their functions which includes arranging for the provision of legal services from external sources including other local authorities.

#### **F. Property implications**

25. As set out above, a number of HBPL staff are already based in County Hall under a 'branch office' type arrangement and BCC's Property and Assets team are involved in the project team to manage accommodation requirements.

#### **G. Unitary Council**

26. The proposed model is designed specifically with the move to the new unitary council in mind.

#### **H. Other implications/issues**

27. Due diligence of the business case has been undertaken to scrutinise the proposed new service against the objectives and strategy of the council and business unit. This includes the commissioning of an external party to review the business case.

28. The statutory Equalities Impact Assessment has been completed and will be reviewed and updated throughout the project.

**I. Feedback from consultation, Local Area Forums and Local Member views**

29. The proposals have no local area implications.

**J. Communication issues**

30. Members – The Cabinet Member for Resources has been involved from the early stages of developing proposals and will continue to steer the development and implementation of the new service as it progresses.

31. Business units – A network of business managers and officers who are familiar with the existing legal service arrangement and its operation is being utilised to secure feedback to be incorporated in the design of the new legal service. A survey was sent to these officers, as well as the corporate leadership team distribution list. This feedback has helped to shape the current service proposal. It has also helped to highlight any preferences, possible future demands, and any concerns or risks surrounding both the proposed new service and any transitional matters. This group will continue to be consulted and involved through the implementation process.

32. Staff – Formal consultation with staff and their recognised trade union representatives will be undertaken by HBPL in relation to those of their employees that will be directly or indirectly affected by the proposals. The consultation will need to be carried out in accordance with relevant employment law provisions, primarily the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996 (as amended) as well as any specific policies adopted by the employing council. It is also intended that a series of staff briefings will take place as necessary in conjunction with HBPL, as well as separate 1-2-1 meetings to discuss experiences and preferences/concerns. Provision has been made within the business case for dedicated BCC HR resource to support this work. There is a collective commitment to engaging and supporting staff throughout the change programme.

**K. Progress Monitoring**

33. The progress of the actions of this decision will be monitored through the council's existing governance (specifically, the Resources Business Unit Board chaired by the Cabinet Member for Resources).

34. The implementation process will be overseen by a Project Group and the implementation and transition process will be monitored against a comprehensive programme plan. Relevant professional leads from the district councils will be invited to join this group.

35. In addition:

- An HBPL/BCC Exit Group is meeting regularly to monitor progress of the actions which specifically relate to the exit from the HBPL IAA (including TUPE and HR issues; IT and data migration; accommodation etc). This group includes BCC's Director of Policy, Performance and Communications and Head of Legal and Compliance; HBPL's Head of Legal Practice; plus HR/IT/project management officers from both councils.

- The governance and service arrangements for the proposed shared service arrangements with the district councils will be developed and set out in the Inter Authority Agreement (IAA).

## **L. Review**

36. This decision focuses on delivery of services and will not impact existing council policies.

### ***Your questions and views***

*If you have any questions about the matters contained in this paper please get in touch with the Contact Officer whose telephone number is given at the head of the paper.*

*If you have any views on this paper that you would like the Cabinet Member to consider, or if you wish to object to the proposed decision, please inform the Democratic Services Team by 5.00pm on Friday 22 March 2019. This can be done by telephone (to 01296 382343), or e-mail to [democracy@buckscc.gov.uk](mailto:democracy@buckscc.gov.uk)*