

PART EXEMPT

HAVANT BOROUGH COUNCIL

CABINET

DATE 7th Sept 2022

Options for HBC Legal Services

Report by Chief Legal Officer

FOR DECISION

Report Number: HBC/075/2022

Key Decision: No

1.0 Purpose of Report

A report seeking approval to join the Southampton and Fareham Legal Services Partnership (SFLSP) being the legal services practice of Southampton City Council.

2.0 Recommendation

Cabinet is *recommended* to:

- a) approve Option 1 set out as detailed within this report; and
- b) delegate authority to the Chief Legal Officer to conclude the terms of the delegation agreement required to give effect to the arrangement

3.0 Background

3.1 Following a Council decision earlier this year to end the sharing arrangements under the Joint Management Team Agreement between HBC & EHDC, the respective Heads of Paid Service agreed a strategy in the form of a Transition Plan for separating out the various shared services.

3.2 One of those services was Legal Services; the targeted separation date under the Transition Plan being July of this year. Unfortunately, due to operational reasons, separation by that point in time was not possible. Instead an interim agreement for continuity of service was reached with EHDC. Under this arrangement, EHDC would continue to undertake the legal work for Havant on a “cost basis” while options for future delivery of the Service was explored.

- 3.3** As part of looking at alternative service delivery models, a costs proposal has now been received from Southampton City Council as detailed in Appendix A. This is commented upon further in this report at paragraph 4.1 below.
- 3.4** The Corporate Strategy places some emphasis on the organisation becoming a “...*responsive and commercial council*...” This, in turn, will require robust decision making. The quality and extent of legal input into the process around this is central, as a strong legal function should provide support to all services, including Cabinet itself and all of Council’s various committees.
- 3.5** Recently the number of legal staff who were contracted to Havant as employees has dwindled. At the same time, due to well documented challenges in the recruitment market, a further question mark has been placed on the prospect of recruiting those with the right skills and experience necessary to deliver a comprehensive and professional service. Currently, the Service has no lawyers or support staff on payroll.
- 3.6** In light of the above, this paper details options to provide the council with the cost efficient legal support it needs

4.0 Available Options Considered

4.1 Option 1: Fully outsource to SFLSP

This is the recommended option and would involve outsourcing the entire legal function. For the avoidance of doubt, the role and function of monitoring officer is separate to this and would therefore be unaffected by this option.

SFLSP are essentially the legal services arm of Southampton City Council. They currently provide a legal service function for Fareham Borough Council.

SFLSP have the size, scale, and team expertise to provide a holistic service. Having them undertake all of Havant’s legal work would not only meet the needs identified in paragraph 3.4 but also those set out in the concluding paragraphs below. The overall cost to HBC would likely be lower in comparison to those fees which external law firms would likely charge. Moreover, although the figure quoted by Southampton is slightly higher than the direct in-house cost, the budgeted rate includes factors such as on costs, travelling to The Plaza plus a certain number of hours for providing key strategic (as opposed to run of the mill) advice. Furthermore, and by way of mitigating these costs, the surplus income generated through completion of planning

agreements will be shared equally between Southampton and Havant.

4.2 Option 2: No change

The current arrangements with EHDC were only ever intended to be short term moreover are inconsistent with that which was contemplated within the Transition Plan. This coupled with the fact that EHDC do not see the arrangement going beyond the termination date of the JMTA (16th December 2022) means that this option is neither workable or practical.

4.3 Option 3: Staff up a fully functioning in house team

In order to provide the range of skills and expertise needed, there would be a need to recruit at least 4 lawyers, plus support staff. This would likely take many months in what is, by any measure, a challenging and difficult recruitment market. As the interim agreement with EHDC Legal Services will likely end sooner rather than later, this option is one which is simply impractical and too unpredictable.

4.4 Option 4: Externalise all legal work to commercial law firms

This would require a procurement exercise and, given the time constraints outlined in paragraph 4.3, is therefore not preferred. The following reasons also reinforce the undesirability of this option:

- Cost effectiveness - from the author's practice experience, the cost of service delivery would be far greater if it was externalised in this way. In addition, there would be the cost of undertaking the externalisation process and the monitoring of it. This would not be a cost effective use of resources. Admittedly there would be set up costs in progressing Option No 1 but these would be dwarfed when compared with taking the Service outside of the "local government family".
- Required level of knowledge and influence on the policy, practices, plans and internal workings of local government - for any legal advice to have meaning and value, it is critical that the advice takes account of the context in which it is given. Within the private sector there is limited knowledge of the operation of local authorities. What has previously proved problematic when other councils have externalised legal work in this way is the unexpected level of council (client) officers' involvement in the provision of legal advice and support. This has

been down to the private firm needing guidance on policy, practices, plans and the internal workings of local government. Often this impacts negatively on private sector lawyers' relationships with client departments moreover can lead to double provision and therefore has had a further impact on cost. Finally, experience demonstrates that solicitors in private practice may be unable or unwilling to exert the same amount of influence on clients to change a course of action which might not be beneficial to the council as a whole. That is to say this option can also be characterised as having no common purpose/public service ethos

Deputy Monitoring Officer comments

Date: 1 September 2022

The legal services function should always ensure that the Council and its interests are protected by providing the legal, corporate and constitutional support that the authority regularly and routinely needs. Local authorities may decide to outsource services as they see fit, either singly or jointly with another authority, providing that quality and value for money are maintained. This report presents the different service delivery models that are available and makes a recommendation based on economy and efficiency. Functional legal work, supporting the Council's services, would be sourced externally. Constitutional and governance advice, necessary to maintain lawfulness and propriety in the Council's business processes, would remain in-house and delivered by the Monitoring Officer.

5.0 Preferred Option

Option 1 is the preferred and recommended option.

A modern and high performing council requires a range of legal support, including corporate and commercial advice; procurement advice; committee support and governance law; planning, housing, environmental health; judicial review; property law; enforcement and regulatory work; expertise in civil and criminal courts and specialist tribunals. This full range of expertise cannot be provided by a small in-house team.

A fully outsourced model would immediately eliminate the requirement and cost of having to staff up an entire "in-house structure" which, given the comment in the above paragraph, may not be fit for purpose in any event. Once outsourced, tailored arrangements with SFLSP would be made with regards to such matters as the sealing of contracts, committee attendance and covering for the monitoring officer when away on leave.

SFLSP will be able to provide timely support on a wide range of legal issues which just would not be affordable for a district council to maintain in an in-house team.

s.151 Officer comments

Date: 31 August 2022

The base service cost of the recommended option, for joining Southampton and Fareham Legal Services Partnership, is within the revenue budget available.

Finally, this option would also realise the partnership ambitions set out within the Corporate Strategy concerning working with and fostering relations with other local authorities in the Solent area.

6.0 Reasons for the Recommendation

The proposals described in this report deliver [both significant savings and] non-cashable efficiencies that present a compelling business case for delegating the council's legal service. Joining the SFLSP will provide access to a holistic and comprehensive legal team who have expertise that cannot be provided in a value for money fashion by an in-house team given the breadth of requirements required to service the council's evolving business needs in a legal advisory context.

7.0 Implications

7.1 Resources: The delegation of this service and the cost of doing so will be met from existing budgets. Note – Option No 1 in the attached Costs Proposal (see Appendix A) is that option considered most appropriate and is what will be progressed with should Cabinet accept the recommendations of this Report.

7.2 Legal: Legal and Governance Implications

7.3 There is no statutory requirement for a council to provide legal services. However it is implicit in the requirement of local authorities to exercise their statutory powers that they should do so intra vires so it is vital that suitable, appropriate and competent legal advice and guidance is available at all times for this to happen.

7.4 The council will be entering into an agreement, the terms of which are flexible and to the extent that the 5 year term can be halved for convenience if either party do not feel that the arrangement is working for them.

7.5 Financial

- 7.6** Option 1, if implemented, will require financial controls to be introduced in order to ensure that expenditure is controlled and managed. The costs budgeted for will be revised periodically and will thus present opportunity for ensuring value for money in the terms of the year by year costs payable. It will be important to ensure that the utilisation of the external legal service is kept within approved budget levels and so a centralised process is being developed to ensure legal service requests are managed and monitored.

8.0 Consultation

Informal consultation has taken place with the Leader and Deputy Leader, unions and the council's Senior Management Team – all of which were positive as the preferred option sees introduction of greater expertise and resilience, all within existing budgets.

Appendices

Appendix A - Appendix A – Costs proposals from Southampton City Council
(EXEMPT)

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