

CABINET

15 February 2011

TRANSFER OF LEGAL SERVICES

Report of the Strategic Director for Resources

STRATEGIC AIM:	A Well Managed Organisation		
KEY DECISION	Yes	DATE ITEM FIRST APPEARED ON FORWARD PLAN	October 2010

1. PURPOSE OF THE REPORT

- 1.1 To seek Member approval for the delegation of legal services to Peterborough City Council (PCC) for the delivery of services as outlined in the recommendations below.
- 1.2 In the current economic climate it is more important than ever to minimise service delivery costs while maintaining the ability to provide a quality legal service, together with the necessity to provide the resilience and capacity to be able to respond speedily and accurately to requests for professional advice and incidents. This report identifies a solution to achieve this objective.

2. RECOMMENDATIONS

It is recommended that:

- 2.1 **Cabinet approve, in principle, the delegation of legal services to Peterborough City Council.**
- 2.2 **The delegated service agreement be for a five year period commencing on 1st April 2011, with a review after the first and third years.**
- 2.3 **The role of the relevant Scrutiny Panel in monitoring the performance and development of the delegated service be included in the legal agreement with Peterborough City Council**
- 2.4 **Subject to the approval of 2.1-2.3 above, formal consultations with staff and Trade Unions be undertaken starting on 16th February 2011 for a period of 30 days.**
- 2.5 **Cabinet delegate final approval to the Strategic Director for Resources in conjunction with the Portfolio Holder for Corporate Services and the Portfolio Holder for Development and Finance , following consultation**

with staff and Trade Unions and following finalisation of the financial implications.

3. REASONS FOR THE RECOMMENDATIONS

3.1 By working with Peterborough, both authorities can mitigate service risks through reduced resource levels. A delegated service would provide greater flexibility over use of resources; give improved access to technical expertise; and greater professional expertise at more favourable rates than current external advisers.

4. BACKGROUND

4.1 The current staffing levels of the legal team are below the level needed to deliver a professional legal service across the whole Council. There is only one solicitor available to provide legal services in many of the key areas, and solicitors handle casework in more than one area of law. There is a wide variety of highly specialised and often complex unitary authority legal work passing through the team, and the lack of ability of staff to specialise due to volume of work is resulting in the potential for reduced service delivery.

4.2 Due to capacity issues, an ad hoc arrangement with Peterborough has been in place since July 2010. As a result of working together, officers from both councils have realised that the way in which their services are structured, provides an opportunity to explore alternate options for delivering these functions.

4.3 If the delegated service is approved by both councils there will need to be a sufficient lead-in period in order to put the necessary arrangements in place to implement the new service. It is proposed that the target date for implementation of the new service be 1 April 2011.

5. BENEFITS

5.1 The advantages for both councils of a delegated service have been identified as:

- The transfer of RCC's staff into the PCC team will increase the pool of staff to deliver these services, resulting in greater flexibility to deploy resources to meet service needs and pressures and increasing resilience.
- Increased pool of knowledge, experience and legal expertise arising from a larger pool of staff. Benefits in terms of competences and expertise that can be achieved through bringing both services together, opportunities for efficiencies through the combining of IT and case management systems and information systems currently used by each service.
- Opportunities for staff development through the ability to work in an urban and a rural local authority. This may result in greater staff retention due to staff not having to move to another local authority to gain this experience.
- Economies of scale in the provision of training through the ability to have relevant training delivered at Council premises, thus enabling more staff to benefit from the training.

- PCC has achieved Lexcel Accreditation (the Law Society's quality assurance standard) which offers greater assurance of high quality services.
- The Councils are located in two different regions which will enable the service to access best practice, benchmarking etc. and use this to improve service delivery.

6. STRUCTURE

- 6.1 It is anticipated that the Solicitor, Assistant Solicitor and the Legal Assistant will join Peterborough City Council under a TUPE transfer agreement. At present the Legal Assistant carries out work in connection with Oakham Cemetery (i.e. maintaining the Burials register and liaising with undertakers regarding burial plots). This work is not strictly connected with Legal Services and will be reassigned to another department prior to the transfer.
- 6.2 The Head of Legal Services at PCC would also act as Head of Legal Services at RCC and would be available on a regular, agreed basis, to meet with Members and Service Managers as required. All functions attributed to Head of Legal Services would be undertaken by the new Head of Legal Services either on-site or remotely. Any specific delegations required will be addressed once the final form of the arrangement is established.
- 6.3 The transferred staff would slot in at the appropriate level. The Head of Business Support - Resources would oversee the delegated service and ensure it delivers to agreed financial and non-cashable targets, any relevant national indicators, service plans, policies and procedures and to seek continuous improvement and efficiency.

7. MANAGEMENT ARRANGEMENTS

- 7.1 In order to ensure that the delegated service delivers to its agreed standard and targets it is proposed that the Head of Legal Services will report to the Head of Business Support - Resources who will in turn report to the Portfolio Holder for Corporate Services and the Strategic Director for Resources from RCC. The Head of Legal Services will be managed in accordance with current arrangements at PCC with a mechanism included in our agreement for RCC to query any performance issues at an appropriate level within PCC.

8. DEMOCRATIC ACCOUNTABILITY

- 8.1 The delegated service is a vehicle for delivering the services outlined above. PCC would be responsible for the legal service provision and accountable to RCC through the management of service delivery. If the delegated service is approved by both councils it will still be subject to regular review by the Strategic Director for Resources, the relevant scrutiny panel, Cabinet/Committees where necessary.

9 DELIVERY OF SERVICE

- 9.1 Service Level Agreements (SLAs) will be drawn up with all service areas to provide a framework for caseload expectation. Under utilisation of the service may be transferred between departments subject to agreement by all

- parties to ensure maximum utilisation of the service across the authority. Requirements in excess of SLAs will incur a pressure on existing budgets.
- 9.2 PCC operate a comprehensive performance and caseload system which monitors the detail and volume of cases being carried out and by which solicitors. This can be reported on weekly, monthly or quarterly basis as required. The Head of Business Support – Resources would be responsible for monitoring progress of cases and budgetary issues along with service managers.
- 9.3 The Head of Legal Services would be available on site on a regular predetermined basis to meet with Members and service managers to provide advice and discuss legal issues and case management.
- 9.4 Access to legal services from RCC would be through Head of Business Support – Resources as the designated point of contact or through a nominated deputy in periods of absence. Assurances will be obtained concerning handling and timescales of urgent cases.
- 9.5 Policy and decision making responsibilities would remain with RCC, although advice would be provided by PCC.

10. FINANCIAL IMPLICATIONS

- 10.1 The overall budget for the cost of the in house legal provision for 2010/11 totals £361,900. This comprises:

Description	Costs (£)
Legal Team Costs	134,800
External Legal Advice	227,100
Total Costs	361,900

- 10.2 Subject to approval, the staff would be furnished with IT hardware by RCC prior to transfer, which would subsequently become the responsibility of PCC. Such equipment would be provided from existing stocks and not purchased specifically for this purpose. All software and systems would then be provided by PCC, although PCC senior lawyers would be given access to internal staffing online resources at RCC (intranet) to enable better understanding of RCC.
- 10.3 RCC would be charged for the provision of legal services on an hourly rate basis which would allow PCC to recover additional staffing costs and overheads incurred by the transfer. In the first instance this would be for the 3 transferring staff, but in the event that the caseload from RCC increases significantly there may be a requirement to employ additional staff. The cost of additional staff would be distributed proportionately between RCC and any other authority (including PCC) for whom they are providing services. The hourly cost would therefore remain relatively unchanged but the overall cost would reflect rising levels of caseload. The hourly rate would be monitored each year to ensure it remains reasonable and covers the costs described.
- 10.4 To ensure that this proposal is viable for PCC, it will be necessary to provide a guarantee/indemnity regarding the minimum level of chargeable work that will be generated by RCC, and this will form part of the legal agreement. This is necessary in order for it to be viable for PCC to take on the three officers from RCC. Further information on this is included in **Exempt Appendix A**. In return for this indemnity, PCC would look to reduce their

hourly rate. Further information is detailed in **Exempt Appendix A**. External Legal Advice (as shown in 10.1) has previously been sought from private law firms in the absence of a suitably qualified internal practitioner. The cost of this advice is invariably charged at an hourly rate significantly in excess of the current charge, so similar work undertaken under the proposed arrangement would represent a significant saving.

10.5 Although the aim of the transfer is to build resilience and expertise, it is anticipated that savings will be generated. The value of the saving is dependent on the hourly rate, (which is yet to be agreed as PCC have to ensure that the hourly rate reflects the actual cost of providing the service and is not a charging/trading figure), and the actual demand for legal services from 1 April 2011.

10.6 In the event that RCC's inability to provide the required number of hours per year results in the need for PCC to make any of the transferred staff redundant, then any redundancy would be agreed in advance of the commencement of that process, giving RCC an opportunity to effectively buy out the redundancy by making a payment equivalent to the outstanding number of hours. These arrangements are designed to ensure a mutual benefit to both Councils at minimal financial risk

11. LEGAL AGREEMENT – EXIT ARRANGEMENT

11.1 The agreement underpinning the arrangement would provide for either party to terminate the arrangement, or to vary it by agreement. A notice to terminate would be required to be given a minimum period in advance. This would be likely to be at least 12 months, probably coinciding with a financial year end. It would still be possible for the authorities to agree a shorter period in any particular circumstances if they were happy to do so.

11.2 In the event of termination, the agreement would contain provisions requiring the parties to seek to redeploy affected employees, or to help them seek alternative employment. It is quite possible, depending on what service delivery arrangements were intended to follow the termination, that there would be a further TUPE application.

12. CONSULTATION

12.1 Legal Staff have been kept informed of the progress regarding the proposed transfer. If the recommendations in this report are approved, formal consultation with the Legal staff affected by the proposal and the trade unions will be undertaken. This will commence on 16 February 2011 for a period of 30 days.

13. RISK MANAGEMENT

RISK	IMPACT	COMMENTS
Time	High	It is intended that the new arrangements will commence on 1 st April 2011.
Viability	Low	The discussions with PCC indicate that the proposals are feasible and viable and bring financial and non-financial benefits to both authorities.
Finance	Medium	There is no additional cost to the authority and a potential for, as yet, unspecified savings.
Profile	Low	The services involved tend to have a low profile until things go wrong, e.g. a Court action or enforcement case. A Shared Service with PCC will reduce this risk.
Diversity & Equalities	Low	EIA screening indicates no issues arising therefore full Impact Assessment has not been carried out.

14. SUMMARY

- 14.1 The proposed arrangement with PCC would provide the Council with far greater resilience than currently exists to deliver the legal services undertaken by the in-house legal team.
- 14.2 The Legal Agreement, Service Level Agreements and regular monitoring by the Head of Business Support - Resources will ensure that the Council does not lose control over key legal areas and those of significant importance to the Authority such as enforcement and contract.

15. REASONS WHY APPENDIX A TO THE REPORT IS MARKED “NOT FOR PUBLICATION”

This appendix is marked “Not For Publication” because it contains exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)).

Background Papers
None

Report Author
S Dring
Tel No: (01572) 722577
e-mail: enquiries@rutland.gov.uk

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.