

RESOURCES SCRUTINY PANEL

16 June 2016

REVIEW OF LEGAL SERVICES

Report of the Director for Resources

Strategic Aim:	All	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr O Hemsley, Portfolio Holder for Resources (excluding Finance), Culture, Sport & Recreation, Tourism and Housing	
Contact Officer(s):	Debbie Mogg, Director for Resources	01572 758358 dmogg@rutland.gov.uk
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Ward Councillors	Not applicable	

DECISION RECOMMENDATIONS

1. That the Resources Scrutiny Panel comments on the report and the intention to continue the shared service arrangement with Peterborough City Council and that consideration will be given to the recruitment of an in house lawyer.

1 PURPOSE OF THE REPORT

- 1.1 To provide Resources Scrutiny Panel with an update on the current shared service arrangement with Peterborough Legal Services.
- 1.2 Peterborough Legal has provided their own update report, which is attached to this report as Appendix A.
- 1.3 The report also provides information regarding possible alternatives to the existing arrangement with Peterborough City Council.

2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 The Council entered into a shared service arrangement with Peterborough City Council legal services in 2011. The Memorandum of Understanding (MOU) set out arrangements for the shared service, which included a review at three and five years.
- 2.2 The first review concluded that the arrangement should continue. May 2016 marks the five year anniversary of the shared service and as such is the five year review point. This review looks at how effective the service is and whether it

should continue further.

- 2.3 Since 2011, there have been a number of changes within the legal structure at Peterborough. Primarily, Kim Sawyer, the former Head of Legal has now taken up the Director of Governance position at Peterborough and still maintains overall responsibility for the legal function. Alison Stuart joined the team in 2015 as Assistant Director of Legal and Democratic. Alison is now the main contact for the shared service provision and for the legal oversight of committee reports; Alison is working with Rutland County Council's (RCC's) Head of Corporate Governance to review the current service arrangements and to implement an improvement strategy.

3 THE SERVICE MODEL

- 3.1 Under the original MOU, which was established at the outset of the shared service arrangement, several Service Level Agreements (SLA's) should operate within the following areas:
- Resources
 - Lifelong Learning and Development
 - Places – Development and Economy
 - Places – Environment, Planning and Transport
 - Vulnerable Adults and Children
- 3.2 Directors or Heads of Service lead on SLA's for their own area; this includes meeting annually with the appropriate Senior Lawyer at Peterborough to agree the SLA and then meeting regularly in –year to monitor the operation of such.
- 3.3 Only named officers are able to instruct legal work and in some instances, the service leads must approve instruction (for example in urgency cases or matters where there is likely to be significant expenditure).
- 3.4 The Council is charged a blended rate of £80.00 per hour for legal advice; the advice can be provided by any member of the legal team depending on the issue involved hence the blended rate. When necessary, external advice is charged over and above this rate but is agreed by both parties.
- 3.5 At regular intervals, Peterborough Legal issue reports for each service area; these are sent to the service lead to check file allocations and costs associated with each action. Disbursement reports are issued quarterly.
- 3.6 The Head of Corporate Governance is the budget holder for the shared service allocation. Each month, the reports are reconciled to ensure the Council remains within budget. Service leads are asked to notify the Head of Corporate Governance if additional legal expenditure is likely to be incurred. For example, in the case of a Judicial Review or any other legal matter where expenditure is likely to place pressure on the budget.

4 ASSESSMENT OF CURRENT ARRANGEMENTS

4.1 The service has been in place for five years and during this time strong working relationships have been built between the two councils. During this time, progress has been reported to this panel on three occasions (Reports 82/2012, 37/2013 and 156/2014 refer). In assessing the effectiveness of the arrangements, it is necessary to consider whether the intended benefits have been realised.

Intended Benefit	Has this been realised?
<p>A more resilient team by joining staffing resources together</p>	<p>The previous in house legal team consisted of four lawyers and the commissioning of specialist advice from external firms.</p> <p>We now have access to a team of 25 lawyers and eight Legal Officers, grouped into specialist teams. We also have access to Business Support officers, who assist with preparation of legal cases for court proceedings etc.</p>
<p>Keeping costs to a minimum by securing the continuation of a non-profit service</p>	<p>Prior to the shared service in 2010/11 the Council's annual budget for legal support was £362k, with actual spend for that year totalling just over £400k. Over the life of the shared service total spend has been as follows:</p> <p>2011/12 £258k</p> <p>2012/13 £325k</p> <p>2013/14 £307k</p> <p>2014/15 £362k (one off costs £50k)</p> <p>2015/16 £298k (one off costs £14k)</p> <p>This demonstrates that with the exception of 2014/15 where there were one off costs relating to a judicial review and an employment tribunal, the cost of legal services is significantly less in the shared service than it was previously.</p> <p>The opportunity for further upskilling teams needs to be explored, so that there is less reliance on legal services for some activities.</p> <p>In addition, we are currently considering the option of employing an in house lawyer to act as the 'intelligent client'. We believe this would strengthen the governance arrangements in respect of the shared service and may reduce the number of simple/basic legal queries passed over the Peterborough.</p>

Intended Benefit	Has this been realised?
Ensuring that both Councils have access to an in house team with expertise in local government law and governance	Peterborough are able to provide the full range of advice that RCC require and on the occasions they have not been able to do this, they have commissioned more specialist advice or instructed counsel on our behalf.
Ensuring efficiency across the teams in avoiding duplication (of training, library resources, external advice etc)	Rutland Officers are invited to training sessions run by Peterborough and these have not just been limited to legal training. General governance training was recently attended by members of the corporate support team. There is scope for more joined up working when implementing new initiatives or responding to new or amended legislation to further reduce duplication.

4.2 The table above demonstrates that overall, the shared service has delivered the original intended benefits. However, there have been some areas where the arrangements have not been as effective as they could be.

4.3 The table at Appendix B shows areas that have been identified for consideration as part of the review; this list is based on feedback from RCC officers and the requirement to re-introduce a framework, which aligns with the principals and service model as set out in the original MOU. It can be seen that some work has already been undertaken to address service shortfalls with proposals to address other issues in the near future. Overall, there appears to be some discontent with the service but only a few RCC officers have offered evidence to support this view. The main issues identified were:

- Delays in advice
- Meetings and on site attendance
- SLAs not updated each year
- Management reports not accurate or receiving on time to enable budget forecasting at RCC

4.4 In the Director of Governance and Assistant Director of Legal and Democratic's report (at Appendix A), it can be seen that both parties recognise where improvements should be made and are starting to make good progress in this area. An action plan has been developed and is being jointly monitored by the Assistant Director Legal and Governance and the Head of Corporate Governance.

5 ALTERNATIVES TO CURRENT SERVICE PROVISION

5.1 Different delivery models have been considered, including:

- Return to an in house service and employ our own legal team directly, supported by external legal advisers for specialist areas.
- Identify an alternative shared service partner

- Procure legal advice from a private sector provider

5.2 The advantages/disadvantages of each option are shown below:

Option	Advantages/Disadvantages
<p>Revert back to a small in house team and buy in specialist advice from third parties</p>	<p><u>Advantages</u></p> <p>On site team, part of the organisation</p> <p><u>Advantages</u></p> <p>Continuity of staffing</p> <p><u>Disadvantages</u></p> <p>Previous experience shows that this would almost certainly be higher cost than the shared service</p> <p>Could take longer to access advice due to reliance on third parties</p> <p>Lack of resilience due the size of team we could employ</p> <p>May be difficulties in recruiting due to pay rates and perceived lack of opportunity within a small team</p>
<p>Identify an alternative shared service</p>	<p><u>Advantages</u></p> <p>Costs not known but a public sector shared service is likely to be the most cost effective option.</p> <p>As per the current shared service arrangement with PCC RCC has already developed a clear vision of what it is trying to achieve with benchmarking data, cost models and robust internal governance therefore is in a strong position to enter into a new partnership</p> <p><u>Disadvantages</u></p> <p>Would take time to establish new relationships and for the new provider to understand how Rutland operates.</p> <p>Continuity of staff not guaranteed</p>
<p>Procure legal advice from a private sector provider</p>	<p><u>Advantages</u></p> <p>Access to a wide range of resources, including specialists</p> <p>RCC has already developed a clear vision of what it is trying to achieve with benchmarking data, cost models and robust internal governance therefore is in a strong position to enter into a new partnership</p> <p><u>Disadvantages</u></p> <p>Full contract management required</p> <p>Unlikely to source one provider to cover all the advice required in respect of the various functions across the Council.</p> <p>Likely to be significantly more expensive than the current</p>

Option	Advantages/Disadvantages
	arrangements Time consuming, resource intensive procurement exercise would be required Change of scope may require changes in contract Continuity of staff not guaranteed

5.3 On the basis of the options analysis, the preferred option remains to be a public sector shared service. The key consideration therefore is whether there are good reasons for seeking an alternative partner, such as the potential for significant financial savings or for a higher quality service. The information set out within this report and accompanying appendices does not support either of these reasons.

5.4 Significant savings – the shared service has delivered annual savings since its commencement and the blended hourly rate provides good value for money. The action required to further reduce the cost of legal services is to reduce the volume of work and number of instructions. This could be achieved through upskilling teams and/or the employment of an in house lawyer.

5.5 Quality - It can be seen from their report, that Peterborough is keen to develop the service and address some of the performance shortfalls, particularly now they have recruited appropriate personnel. We are confident that these improvements will be delivered, working in partnership with key staff.

5.6 In conclusion, it is proposed that we continue the shared service arrangement with Peterborough City Council and that the MOU is extended for a mutually agreeable period of time, with appropriate review points and clear performance measures built in.

6 CONSULTATION

6.1 At the outset of the review into current arrangements, the Assistant Director Legal and Governance asked the Head of Corporate Governance to canvass RCC staff to ascertain their views on the provision of legal service. These views have been incorporated into the table, which is set out at Appendix B and now forms the basis of an agreed improvement plan.

7 FINANCIAL IMPLICATIONS

7.1 The cost of the shared service represents a saving when compared to the previous, in house service. The costs of the service have fluctuated over the length of the agreement, this is attributable to a number of issues such as Judicial Reviews, employment cases, Oakham Enterprise Park lease arrangements and increased child protection costs. The expenditure is scrutinised each month and will continue to be kept under review to ensure costs are relevant and proportionate.

8 LEGAL AND GOVERNANCE

8.1 The Council must have access to a robust legal framework, which offers improved

systems, processes and support, value for money and competent, pragmatic legal advisors. The precedent for a shared service arrangement has already been set; any move to a different service provider will need the appropriate due diligence checks to be undertaken.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 Rutland County Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of the nine recognised protected characteristics. It is sometimes necessary to seek legal advice on equality issues; all matters will be handled in accordance with the appropriate legislation and Council policies.

10 COMMUNITY SAFETY IMPLICATIONS

- 10.1 None identified

11 HEALTH AND WELLBEING

- 11.1 None identified

12 BACKGROUND PAPERS

- 12.1 There are no additional background papers to the report

13 APPENDICES

- 13.1 Appendix A – Report from the Assistant Director, Peterborough City Council
13.2 Appendix B – Areas Identified for Review

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

Report of the Assistant Director Legal and Governance, Peterborough City Council

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1 PURPOSE OF THE REPORT

1.1 Rutland County Council (RCC) and Peterborough City Council (PCC) have been operating a shared legal service since May 2011. The basis of the shared service is set out in the memorandum of understanding between the two Councils governing how the service will operate. The document reflects a shared commitment to provide a full range of legal services to the mutual benefit of both Councils for a period of 5 years with reviews undertaken annually.

2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 Following a successful recruitment exercise, a permanent Assistant Director of Legal and Democratic Services was appointed in July 2015. The Assistant Director won the Inaugural Lawyer of the Year award in 2014 building upon the expertise and strength of the in house team providing leadership and bringing a wealth of knowledge and experience regarding shared services arrangements.
- 2.2 The in house legal team were awarded the Legal Team of the Year in November 2015 and have been shortlisted as finalists for this year's prestigious MJ Awards which is to be announced in June 2016. This illustrates the quality of legal service provision which has been recognised nationally.
- 2.3 With a full complement of staff, this has enabled PCC to provide its legal services expertise and high quality staff with no extra cost to RCC. Training courses are provided to RCC at no additional cost along with Monitoring officer assistance when required.
- 2.4 The continued employment of two former Rutland employees within the Legal Services team maintains the collaborative approach and recognition of the continued shared services arrangement.

3 DELAYS

- 3.1 Within any service delivery model, improvement can always be built upon and PCC recognise this. With increased work pressures and austerity measures, delays can sometimes occur.
- 3.2 Delays have been encountered with service delivery and late provision of invoices over a short transitional period. Due to the absence of a Practice Manager as part of a savings agenda, the PCC case management system which provides data by which the invoices are despatched to RCC was not shut down after the invoices were produced which meant that time was recorded after the close down date. This meant that RCC were given figures which were substantially less than the subsequent invoice provided for over a short period.

- 3.3 This was rectified via meetings between the Assistant Director and Head of Corporate Governance and the Assistant Director taking steps to provide a new procedure.
- 3.4 There is now a procedure whereby the system is shut down on the 3rd day of each month. RCC do not incur any extra charges and there is no carry over of time recording. The costs of a failure to record the time spent on a file is borne by PCC. The data is then distributed to RCC on the deadline of 5th of each month.
- 3.5 In acknowledgement of a failure in service delivery delay for a short period, costs were agreed and paid back to RCC and the issues has been addressed to the satisfaction of RCC.

4 RESOURCING

- 4.1 Due to further increase in work, a capacity bid has provided for new lawyers to join the service. Recognising the requirement for more dedicated provision at RCC, PCC has now recruited a new full time planning lawyer and a new full time property lawyer. We have also recruited new legal officers to help with workloads and will additionally be looking to recruit a highways lawyer. This allows RCC to gain access to more lawyers with specialist expertise. We have recognised capacity requirements and have dealt with them effectively at no cost to RCC.

5 ATTENDANCE AT RCC

- 5.1 There has been a perception that increased attendance at RCC is required to facilitate increased needs. In consideration, PCC have increased attendance. Two property lawyers attend at RCC per week on alternate weeks, ensuring that there is office cover and a legal presence in RCC on a regular basis. In addition, a Planning lawyer also attends RCC once a month to provide legal advice and assistance on site, in addition to attendance at Planning Committees.
- 5.2 A childcare lawyer attended once per month but due to increasing demands, this attendance has increased to one day per fortnight. The Senior Lawyer also attends one day per month to discuss service needs.

6 INTERNAL MEETINGS

- 6.1 The need for regular meetings was highlighted. Bi-Monthly one to one meetings have been scheduled between the Head of Corporate Governance and the Assistant Director of Legal and Democratic Services to ensure that any issues are addressed and resolved. Further meetings between the Director of Governance and Director for Resources are to be scheduled if required to provide monitoring officer assistance.

7 WORKLOADS

- 7.1 There has been a vast increase in instructions within Child Protection. There has been an increase in legal planning meetings which were initially three per year in 2015. Since the beginning of this year, the caseload has increased to nine legal planning meetings in the last three months but also additional work in judicial review matters and complex child protection cases. Initial advice and assistance is being provided within the in-house legal team who conduct most advocacies due to their skills and expertise and an in-house Counsel.

7.2 On a collaborative basis, the Assistant Director has ensured any matters of interest are cascaded to the Director of Resources and Head of Corporate Governance which has enabled RCC to deal with complex issues more swiftly.

7.3 It has been agreed that all Council meeting reports will be distributed through the Assistant Director of Legal and Democratic Services. It has been noted by both RCC and PCC that reports can be provided with unsustainable timelines. It has been agreed that a three day turnaround for provision of reports will be implemented.

8 CASE MANAGEMENT SYSTEM

8.1 PCC are exploring the possibility of RCC having more readily available access to part of the PCC case management system to be able to have up to date information when required. This is being developed.

9 ORGANISATIONAL IMPLICATIONS

9.1 In the main, the arrangement has been working well with positive client feedback on the arrangement. The implementation of monthly meetings and the recruitment of an Assistant Director has provided a more focused approach for the shared service moving forward.

9.2 Any issues have been addressed and it is the agreed view that RCC and PCC can work more collaboratively in other related areas such as Democratic Services.

10 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

10.1 Please see the main report.

11 BACKGROUND PAPERS

11.1 None.

12 APPENDICES

12.1 None.

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

AREAS IDENTIFIED FOR REVIEW

Issue	Comments	Actions to date	Further action required
Service Level Agreements	<ul style="list-style-type: none"> SLA's are not in operation and do not reflect current officer or operational details. 	<ul style="list-style-type: none"> New SLA's have been implemented from 1 April 2016. These Agreements address timescales for Committee reports, contain clear instructing officer details, include a forecast of hours needed for legal work, include reference to the role of the Head of Corporate Governance (as lead contract officer and budget holder) and are consistent across all five areas (apart from service specific references). The Head of Corporate Governance has been involved in initial meetings with Senior Lawyer and Heads of Service and in the sign off process leading up to implementation date. 	
Budgets/Reports	<ul style="list-style-type: none"> The costs associated with the provision of legal services are, at times, difficult to manage. At present, there isn't a robust mechanism in place to monitor what has been 	<ul style="list-style-type: none"> RCC officers are now asked to notify the Head of Corporate Governance of any projects, which might put pressure on the legal budget. Similarly, the legal team now 	<ul style="list-style-type: none">

Issue	Comments	Actions to date	Further action required
	<p>referred to Legal and how much that is likely to cost. The Head of Corporate Governance relies on Heads of Service to identify pressures and to 'sign off' costs, which are reported in a series of monthly reports.</p> <ul style="list-style-type: none"> • During 2015/16 we encountered serious problems with the way in which reports are raised by Peterborough. We experienced serious delays in receiving disbursement reports (quarterly), we were notified that the monthly reports had incorrect parameters, which resulted in an undercharge to RCC. The parameters had failed to recognise the last working day of each month – this affected reports for a six month period. Other issues with reporting have also now been resolved. • Case reports are now raised each month rather than on a quarterly basis, as set out in the original MOU. Although this is better in terms of monitoring, they are still 	<p>notify Assistant Director Legal and Governance when they identify a peak in RCC workloads.</p> <ul style="list-style-type: none"> • The Head of Corporate Governance and Head of IT have discussed the possibility of creating an instruction workflow system, which allocates Unique Reference Numbers via an Instructing Officer. This would allow cases to be monitored and gatekeeping to be introduced. This is still in the early stages of consideration. • We have been assured that the reporting errors have now been resolved. It is understood that this task has been reallocated to an admin officer. • The reporting timetable has now been addressed so that reports will be issued before the 5th day of each month; this will allow RCC Heads of Service to accurate forecast budgets. • RCC has also requested to meet with the Head of Finance at Peterborough in 	

Issue	Comments	Actions to date	Further action required
	<p>received late in the month.</p> <ul style="list-style-type: none"> Discussions have also taken place regarding the capability of Peterborough's IKEN case management system. For example, the ability to produce detailed reports under the 'General File' heading each month. The cost of legal advice provided has remained static since the shared service commenced with no imminent intention to amend the rates charged. The hours spent on legal advice has increased during the last year due to specific issues. 	<p>order to resolve any outstanding problems with the reporting mechanism.</p>	
Committee Report Timescales	<ul style="list-style-type: none"> The original MOU requests three days for the consideration of Council reports. This has taken on some ambiguity over the years so needs to be re-emphasised, particularly through the SLA's. 	<ul style="list-style-type: none"> The new SLA's refer to the three day consideration period and a three day response time from Legal Services. 	
Customer Service and Delays	<ul style="list-style-type: none"> It has been reported that RCC officers have been passed to four different lawyers when requesting assistance with a routine matter. During this process, the customer service 	<ul style="list-style-type: none"> The Assistant Director Legal and Governance is aware of these issues and has successfully acquired additional funding to engage new lawyers. She has also extended other 	

Issue	Comments	Actions to date	Further action required
	<p>element was overlooked, leaving the officer to request new appointments.</p> <ul style="list-style-type: none"> • Delays have also been reported with Oakham Enterprise Park (OEP) leases; this appears to be a consistent pressure and is thought to be a matter of capacity rather than capability. • Conversely, it has also been established that RCC officers have failed to meet timescales or failed to produce documentation to enable Legal officers to present at Court. 	<p>appointments in order to improve capacity.</p> <ul style="list-style-type: none"> • Delays involving RCC's failure to work with legal officers has been brought to the attention of the Head of Service and Head of Corporate Governance and an assurance provided that this will be addressed for the future. 	
Meetings and On Site Attendance	<ul style="list-style-type: none"> • The original MOU contained reference to regular meetings between Legal and RCC officers. Again, this arrangement has fallen and we now operate an ad hoc system of onsite attendance. 	<ul style="list-style-type: none"> • Regular meetings have commenced from 1 April 2016 between: <ol style="list-style-type: none"> 1. Director of Governance and RCC Monitoring Officer 2. Assistant Director Legal and Democratic and RCC Head of Corporate Governance 3. Senior Lawyers and Heads of Service in SLA areas • A schedule of regular onsite attendance will also be drawn up for access [to legal advice] and health and safety monitoring purposes. 	<ul style="list-style-type: none"> •

Issue	Comments	Actions to date	Further action required
Alternative Provision and Scrutiny Oversight	<ul style="list-style-type: none"> As we approach the five year review point, we must consider alternative options to the current provision of legal advice. The Resources Scrutiny Panel has asked for a full review, including options for alternatives arrangements, to be presented to the first meeting of the Panel in the new municipal year. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> Alternative solutions will be considered and included in the Scrutiny report. These may include the employment of an in-house lawyer who can provide generalist advice and act as first line contact for Peterborough Legal Services, should a matter require more involved advice, a secondment opportunity for a Peterborough lawyer or a move to an alternative legal services provider. The Scrutiny report, which will be owned by Peterborough Legal Services, will also include the consideration of future pressures on the service.