

BUSINESS SUPPORT OVERVIEW & SCRUTINY COMMITTEE

5 JANUARY 2017

SHARED LEGAL SERVICE BETWEEN GRAVESHAM BOROUGH COUNCIL AND MEDWAY COUNCIL

Report from: Perry Holmes, Chief Legal Officer
Author: Jan Guyler, Head of Legal Services

Summary

Members are asked to recommend to Cabinet and full Council that Medway Council assume responsibility for the discharge of Gravesham Borough Council's Legal Services functions. This is permitted under the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 which provide for the executive of one local authority to arrange for a function for which it is responsible to be discharged by the executive of another local authority.

In addition Members are asked to recommend to Cabinet to delegate authority to Medway's Chief Legal Officer to assume responsibility for the management and delivery of Legal Services for both Medway and Gravesham and, to enter into the necessary agreement with Gravesham.

This report will be formally submitted to Cabinet on 17 January 2017 and Full Council on 26 January 2017.

1. Budget and Policy Framework

1.1 The function of Legal Services is an executive function within the portfolio of the Cabinet Member for Resources. Medway Council's Constitution provides that a decision to establish joint arrangements with one or more local authorities to exercise executive functions is a matter for the Leader (Article 10.2 (b)), whilst the decision to accept such a delegation of a function from another local authority is reserved to full Council (Article 10.4(c)).

2. Background

2.1 Medway Council are currently discussing proposed arrangements to establish a shared legal services with Gravesham Borough Council. At the meeting of Gravesham's Cabinet on 6 June 2016, Members of the Cabinet agreed to the progress of a full evaluation of a fully shared Legal Services Team with Medway Council. A copy of the report to Gravesham's Cabinet is attached as Appendix A. Gravesham's

Cabinet will consider a further report on 9 January 2017 seeking Cabinet's agreement to delegate Gravesham Borough Council's Legal Services functions to Medway Council.

- 2.2. Therefore, this report will set out the necessary actions which are required for the proposed shared service to take effect.

3. Advice and analysis

- 3.1 A project group has been established to implement the shared working arrangements, comprising officers from Legal Services, Finance, Human Resources and ICT. This matter is scheduled to be considered by Cabinet on 17 January 2017. Subject to Cabinet on 17 January 2017 recommending to full Council to accept the delegation of the Legal Services function from Gravesham Borough Council and subject to full Council on 26 January 2017 accepting that delegation, Gravesham's Legal Services staff are scheduled to transfer under TUPE regulations to Medway Council on 1 April 2017.
- 3.2 The proposed shared service will take the form of a delegation of an executive function from Gravesham's Cabinet to Medway's full Council. This report recommends that Medway's Cabinet recommends to full Council to accept this delegation and further delegate these functions to the Chief Legal Officer, who will take on the responsibility of delivering Legal Services functions for both authorities. The Chief Legal Officer will continue to deliver Medway's functions and if requested report on the progress of the shared service to the Business Support Overview & Scrutiny Committee and will also deliver Gravesham's functions and report if requested to Gravesham's senior management in a format and frequency to be agreed in the legal agreement between the two authorities.
- 3.3 A Business Case has been prepared by officers from Gravesham and Medway to provide further information regarding the work of the two separate Legal Services including current costs, staff transfers, potential savings and other benefits from establishing a shared Legal Service such as increased resilience and potential to provide Legal Services to external bodies and bring in an income for Medway Council. A copy of the Business Case is attached as Appendix B. This may be subject to further change but will be finalised before the matter is considered at Full Council.
- 3.4 In summary, Gravesham have two vacant posts that will not be recruited to and some further posts at Gravesham Borough Council I will not form part of the TUPE transfer making a saving of £204,089 which will be shared between the two authorities on a proportionate basis, to be formally agreed in the legal agreement between the two authorities. All other Gravesham staff members will transfer to the employment of Medway Council under TUPE. It is proposed to review the new structure after transfer.

- 3.5 Any current capacity within the Medway Council legal team will be utilised to back fill for the two vacant posts in the Gravesham team. Medway Council are already providing assistance to Gravesham to cover their Planning legal work and other ad hoc matters on the basis of 2 days a week in the interim while a shared Legal Service is established. Gravesham Borough Council are paying for this at market rate. It is anticipated that the shared service would provide resilience and greater expertise within the team. This would reduce the need to instruct external solicitors or barristers and reduce costs further. It could also provide opportunities and the capacity to trade legal services to other public bodies to create an income for Medway Council.
- 3.6 Capacity, workloads, worktypes and expertise within the shared legal team will be thoroughly reviewed and consideration given to the need for a restructure if resources need to be reorganised to meet client demands or make further savings.

4. Options

- 4.1 **Option 1: Do Nothing.** Each local authority can retain it's own separate Legal Services teams undertaking work for their own client departments only. This has the advantage of consistency for staff and client departments but does not allow resilience or reduced costs that could be achieved by sharing resources. Both Council's are carrying vacancies and using locums to provide additional support which is not sustainable.
- 4.2 **Option 2: Establish a Shared Legal Service with Gravesham Borough Council.** Gravesham's existing staff members would transfer to the employment of Medway Council under TUPE Regulations providing greater resilience and expertise in the team and reduce costs due to economies of scale. Further costs may be possible through a future restructure, if considered necessary.
- 4.3 **Option 3: Restructure before establishing the Shared Legal Service to reduce the team sizes.** This would immediately reduce staffing costs but would significantly reduce capacity within the team and could impact on the service provided to client departments in both local authorities. This risks needing to employ locum lawyers or instruct external solicitors to create further capacity to meet demand, which is significantly more expensive than permanent staff. This also risks reputational damage if either local authority is unable to meet deadlines. This option is not considered feasible as both teams are operating at high capacity and any reduction in numbers would not enable the service standards to be maintained.

5. Risk management

Risk	Description	Action to avoid or mitigate risk
Either party chooses to terminate the delegation.	Medway Council permanently takes on the responsibility for and costs of providing Gravesham's Legal Services functions. Either party may choose to end the shared service or the arrangement fails, leaving Medway with additional costs and Gravesham with no legal service.	Gravesham's formal delegation and decision to share services approved by their Cabinet. A formal legal agreement will be made to include exit arrangements with appropriate notice periods for seeking to vary or terminate the services.
Failure to deliver effective service	The proposed service is a reduction on existing resources and a new way of working; it may fail to deliver an effective shared legal service for Medway and/or Gravesham Councils.	A formal legal agreement will be made to include required outputs and how performance will be measured, monitored and reported.
Staff grievance	Changes to staff terms and conditions may not be introduced appropriately	HR staff from both Councils are involved in the project and are leading on this work-stream.

6. Consultation

- 6.1 As Legal Services are "back-office" functions, this change will not impact on the public and so has not been subject to public consultation.
- 6.2 Since the implementation of the shared service impacts on staff terms and conditions, informal and formal consultations are in progress, lead by HR Services at both councils.

7. Financial Implications

- 7.1 From 1 April 2017 the Legal Services staff in post at Gravesham will transfer to Medway Council's payroll and be paid from Medway's salaries budgets. The current total staffing budget for Gravesham Borough Council is £345,792.90. The current total staffing budget for Medway Council (Place and Information Governance Team) is £464,213.46. The current overall cost of both teams is £810,006.36. Gravesham Borough Council's share of the current costs are therefore 43% and Medway Council's share of the costs are 57%.

- 7.2 It is anticipated that the TUPE transfer of staff from 1 April 2017 would result in an overall cost of £605,916 resulting in an overall saving in the region of £204,089. The savings will be shared between the two authorities on a proportionate basis likely to be similar to the 43/57% share of the costs although discussions are continuing regarding potential additional support from Medway staff to Gravesham Borough Council which may impact on this.
- 7.3 Once the TUPE Transfer of staff has been completed and officers have been operating in the new structure for a number of months, a review will be undertaken of the structure of the Place Team in order to ensure that all officers are in the correct posts in order to maximise their expertise across the shared working arrangement.
- 7.4 In setting up any shared working arrangement, there will be some investment/set-up costs in order to ensure the arrangement is effective. The list below provides a suggestion of the costs that need to be considered, but is not deemed to be exhaustive:
- 7.4.1 IT costs of setting up access to other's systems, plus potentially new IT equipment to enable better facilities for staff.
- 7.4.2 Property and facilities costs – there may be a need to acquire additional desks and chairs, etc to ensure that all officers can be accommodated in any one site.
- 7.4.3 It is not anticipated that there will be any redundancy costs at this stage as all officers will be transferred across to Medway Council. However, this may need to be considered moving forward, should a revised structure identify posts that are not required.

8. Legal Implications

- 8.1 Section 101(1) of the Local Government Act 1972 allows local authorities to delegate non-executive functions to other local authorities. The Local Authority (Arrangement for the Discharge of Functions)(England) Regulation 2012 made under section 9EA of the Local Government Act 2000 allows local authorities to delegate executive functions to other local authorities. Under the Local Government Act 2000, the default position is that a function is an executive function unless specific provision provides that they are non-executive. The Local Authority (Functions and Responsibilities)(England) Regulations 2000 sets out the specific functions that are non-executive. As these Regulations do not specify that legal functions are non-executive, they will be executive functions for the purpose of a delegation.
- 8.2 Gravesham's Cabinet will consider whether to make a delegation of their Legal Services functions to Medway Council. The delegation must be accepted by Medway's Full Council, and once accepted, Medway

will become statutorily responsible for Gravesham's legal services functions as though it were its own functions.

8.3 The delegation of Gravesham's legal services functions to Medway will be documented through a legally binding contract, which both parties must agree and sign. The delegation agreement will cover, but is not limited to:

- Governance and staffing arrangements
- Cost sharing
- Liability, indemnity and insurance
- Data protection and information governance
- Exit provisions

8.4 The delegation agreement will fall outside the scope of the Public Contracts Regulations 2015 so there is no requirement for Gravesham to tender these services. The delegation agreement will implement a co-operation between Gravesham and Medway with the aim of ensuring that Medway provides public services they have to perform with a view to achieving objectives they have in common. The delegation will also give Medway an exclusive right by law to provide the services to Gravesham. Such administrative arrangements are expressly exempted from the EU procurement regime (Regulations 11 and 12 (7) of the Public Contracts Regulations 2015).

8.5 A structured shared service managed by the Chief Legal Officer is able to take advantage of support staff and facilities at Gravesham Borough Council through the powers in:

- Section 113 of the Local Government Act 1972 which allows local authorities to place officers at the disposal of other local authorities; and
- The Local Authorities (Goods and Services) Act 1970 which allows local authorities to make arrangements with each other for the provision of goods, administrative, professional or technical services and vehicle, plant or apparatus.

9. Recommendations

9.1 Members to recommend to Cabinet that:

9.1.1 Cabinet recommend to the Leader of the Council that option two set out in paragraph 4.2 above is agreed whereby Medway Council shall assume responsibility for the discharge of Gravesham Borough Council's Legal Services functions as permitted under the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012 which provide for the executive of one local authority to arrange for a function for which it is responsible to be discharged by the executive of another local authority.

- 9.1.2 Cabinet recommend to Full Council to accept the delegation by Gravesham Borough Council of its Legal Services functions to Medway Council.
- 9.1.3 Cabinet agree to delegate authority to the Chief Legal Officer of Medway Council to enter into a legally binding contract between both local authorities setting out the detail of the arrangements for a fully shared Legal Services.
- 9.1.4 Cabinet agree to delegate authority to Medway's Chief Legal Officer to assume responsibility for the management and delivery of legal services for Gravesham Borough Council jointly with the services provided for Medway Council and for this to be reflected in the Council's Scheme of Delegation.

In addition, the report to Cabinet on 17 January 2017 will include the following recommendation for the Leader:

- 9.5 The Leader of the Council to agree to assume responsibility for the discharge of Gravesham Borough Council's Legal Services functions as permitted under the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012 which provide for the executive of one local authority to arrange for a function for which it is responsible to be discharged by the executive of another local authority

Appendices

- Appendix A – Gravesham Borough Council Cabinet report of June 2016
Appendix B – Draft Business Case (circulated separately as an exempt appendix)
Appendix C – Legal Staffing Structure (June 2016)
Appendix D – Examples of Shared Services

Background Papers:

None

Lead officer contact:

Jan Guyler, Head of Legal Services
Telephone: 01634 332158
Email: jan.guyler@medway.gov.uk