

CABINET

10 JULY 2018

SHARED LICENSING SERVICE BETWEEN GRAVESHAM BOROUGH COUNCIL AND MEDWAY COUNCIL

Portfolio Holder: Councillor Jane Chitty, Planning, Economic Growth and Regulation

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Summary

This report seeks authority from the Cabinet to delegate executive licensing functions to Gravesham Borough Council whereby Gravesham Borough Council will assume responsibility for the discharge of Medway Council's executive and non-executive Licensing functions. Cabinet is also asked 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 Licensing Service.

1. Budget and Policy Framework

1.1 The Licensing functions are largely non-executive. The decision making by Medway Council will therefore largely be made by the Licensing and Safety Committee or its Sub-Committees under delegations from Full Council. An exception is the licensing of scrap metal dealers which remains an executive function, Cabinet is recommended to delegate responsibility for discharging this function to Gravesham Borough Council.

2. Background

2.1 Medway Council approached Gravesham Borough Council (GBC) regarding the potential to share a service for Licensing due to the Licensing Manager at Medway Council choosing to take retirement at the end of April 2018 and as part of the digitalisation programme.

2.2 There are two phases to the proposed shared Licensing Service:

- 2.2.1 On an interim basis the GBC Licensing Manager provides support to the Medway Council Licensing Team in a shared manager role. This came into effect on 1 May 2018 after the Medway Council Manager had retired. This not only provides an interim solution but allows the revision of working practices and alignment of procedures ahead of a fully shared service.
- 2.2.2 The longer term plan is to implement a full shared Licensing Service with effect from 1 November 2018. It is proposed that Gravesham Borough Council be the host authority for this shared service with Medway Council Licensing officers TUPE transferring to GBC employment.

3. Advice and analysis

- 3.1 The Licensing and Safety Committee, at its meeting held on 26 June 2018, considered and recommended Full Council to approve this proposal. The Business Support Overview and Scrutiny Committee will scrutinise and comment on the proposed delegation of the Licensing service functions at its meeting on 5 July 2018 and the views of the Committee will be reported to Cabinet separately.
- 3.2 Cabinet is asked to agree to delegate authority to the Chief Legal Officer of Medway Council to enter into a legally binding contract between both local authorities and to agree that Medway Council delegates responsibility for the discharge of its Licensing Service executive functions to Gravesham Borough Council. This report also recommends Cabinet to agree that all executive licensing delegations currently with the Chief Legal Officer can also be exercised by Gravesham Borough Council's Assistant Director (Communities).
- 3.3 Full Council will be asked to agree the proposed delegation of the Licensing service functions to GBC on 19 July 2018. Subject to these agreements being reached, Medway's Licensing Services staff are scheduled to transfer under TUPE regulations to GBC on 1 November 2018.
- 3.4 The initial phase of sharing GBC's Licensing Manager has been achieved in accordance with Section 113 of the Local Government Act 1972, which allows a local authority to place any of its officers, who consent to the arrangement, at the disposal of another local authority on such terms as may be agreed between the parties.
- 3.5 The second phase of implementing a full shared service can be achieved in accordance with Section 101 of the Local Government Act 1972 and the Local Authority (Arrangements for the Discharge of Functions) (England) Regulations 2012, whereby Medway Council can delegate to Gravesham Borough Council its Licensing functions.
- 3.6 A Business Case has been prepared by officers from Gravesham and Medway to provide further information regarding the work of the two

separate Licensing Services including current costs, staff transfers, potential savings and other benefits from establishing a shared Licensing Service such as increased resilience and availability of specialist skills across both authorities leading to increased efficiency. A copy of the Business Case is attached as Appendix 1.

- 3.7 Capacity, workloads, work types and expertise within the shared Licensing 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. Benefits of a Shared Service

- 4.1 The anticipated benefits arising from a shared Licensing service with Gravesham Borough Council are set out below:

4.1.1 The team will be lead by GBC's Licensing Manager, who is very experienced and has brought about significant improvements in processes and procedures at GBC which in turn has brought greater efficiencies. These improvements have largely been due to digitalisation, for example, all licensing forms at GBC are now online making the process quicker and easier for taxi drivers to complete the forms and pay licence fees online as well as reducing the administration time spent by the team. Such improvements can be adopted, wherever suitable, in relation to Medway Council licences and bring further efficiencies and savings.

4.1.2 It is anticipated that it would be extremely difficult to recruit a suitably experienced Licensing Manager and by sharing GBC's Licensing Manager the costs of employing that manager are shared and therefore reduced as opposed to each local authority recruiting their own managers.

4.1.3 Resilience within the team will improve to cover sickness and annual leave which will enable staff to gain further experience and develop their skills.

4.1.4 Medway Council and GBC have established several shared services: Fraud and Audit team, Legal Services (including a shared Monitoring Officer), Information Governance and HR. All of the shared services have been successful in bringing resilience, good performance and savings. Teams at both local authorities have adapted well to the shared services and work collaboratively together. Medway Council has taken a lead in the shared services so far but in relation to the shared Licensing Service Medway would benefit from GBC's experienced Licensing Manager.

4.1.5 A legal agreement is being prepared regarding the staffing and financial matters and will include an exit plan and an escalation procedure to be followed in the event that a difference of opinion on an issue arises, passing initially to Medway Council's Chief Legal Officer

and Gravesham's Assistant Director (Communities), and ultimately to both Chief Executives, if required. However, it is unlikely that matters would escalate to this level as Medway's Head of Legal Services attends GBC's weekly Management Team Meeting along with GBC's Chief Executive and all Directors where any matters of concern can be raised immediately.

- 4.1.6 A presence will remain at both sites to ensure service delivery to service users.
- 4.1.7 Medway Council staff will remain on Medway's employment terms & conditions once they are TUPE transferred to GBC and will receive travel expenses for travelling between the sites.
- 4.1.8 Medway's Licensing team are about to change IT systems to IDOX Uniform. GBC have already moved to IDOX Uniform and can therefore provide support during the migration, which will bring efficiencies.
- 4.1.9 Each local authority will retain their decision making powers relating to licensing matters through the existing Committees, Cabinet and Full Council just as they do currently, for example, approving each authority's own gambling and licensing policies. It is only the day-to-day work of the Licensing teams that will be shared.

5. Options

- 5.1 **Option 1: Establish a Shared Licensing Service with Gravesham Borough Council.** Medway's existing staff members would transfer to the employment of Gravesham Borough Council under TUPE Regulations providing greater resilience and expertise in the team and reducing costs due to economies of scale. Further costs may be possible through a future restructure, if considered necessary. **It is anticipated that option 1 will bring the following benefits:**

- Added resilience across the two authorities. There will be a larger pool of officers covering both authorities providing additional resilience to cover sickness absence/vacancies or increased workload should this be required.
- Availability of specialist skills across both authorities leading to increased efficiency; potential for a reduced requirement for external support from contractors, etc.
- Sharing of best practice in the delivery of Licensing Services.
- Expansion of knowledge base of individual.
- Accelerated progress in digitalisation which will bring further efficiencies.

- 5.2 **Option 2: Restructure before establishing the Shared Licensing Service to reduce the team sizes.** This may reduce staffing costs but not significantly as Medway Council would need to recruit to the Licensing Manager post. This would significantly reduce capacity within the team and could impact on the service provided to client departments and members of the public in both local authorities. In particular it would reduce the capacity to implement an increasingly digitalised service to the public; while this will bring efficiencies once implemented it is at the outset labour intensive. 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.
- 5.3 **Option 3: Do Nothing.** Each local authority can retain its own separate Licensing Service teams undertaking work for their own areas only. This has the advantage of consistency for staff, client departments and members of the public but does not allow resilience or reduced costs or increased efficiencies that could be achieved by sharing resources. Medway Council has had a vacancy in the Licensing Manager post with effect from 1 May 2018 and would need to recruit to the post if the shared service option is not pursued.

6. Risk management

Risk	Description	Action to avoid or mitigate risk
Either party chooses to terminate the delegation.	Gravesham Borough Council permanently takes on the responsibility for and costs of providing Medway's Licensing Service functions. Either party may choose to end the shared service or the arrangement fails, leaving Gravesham with additional costs and Medway with no licensing service.	Medway's formal delegation and decision to share services approved by its Full Council. 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 licensing 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.
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7. Consultation

- 7.1 It is anticipated that there will be no impact on customers of the service (both internal and external) with the development of the shared service and so this has not been subject to public consultation.
- 7.2 Since the implementation of the shared service impacts on staff terms and conditions, informal and formal consultations are in progress, led by HR Services at both councils.

8. Licensing and Safety Committee – 26 June 2018

- 8.1 The Licensing and Safety Committee considered the proposals at its meeting on 26 June 2018.
- 8.2 Members considered a report on a proposal for Medway Council to delegate the Council's licensing functions to Gravesham Borough Council whereby Gravesham Borough Council would assume responsibility for the discharge of Medway Council's licensing functions.
- 8.3 The Chief Legal Officer advised the Committee that this would be the third shared service between the two Councils but would be the first time where Gravesham would be the lead Council. Following the retirement of Medway's Licensing Manager at the end of April 2018, Gravesham Borough Council's Licensing Manager was providing management support to Medway's Licensing Team on an interim basis. It was envisaged that the new shared service arrangements would build resilience into the team and provide an opportunity to consider potential new ways of working which might lead to savings. The shared service business case was appended to the report and set out the case for the proposed option, Option 1 – the establishment of a shared licensing service
- 8.4 With reference to the Addendum report, the Chief Legal Officer advised the Committee that, although a majority of licensing functions were non-executive functions, the licensing of scrap metal dealers was an executive function. It would therefore be necessary to seek the agreement of Cabinet to delegate responsibility for the discharge of this function to Gravesham Borough Council. The Addendum report included additional recommendations to reflect this distinction between the delegation authority of executive and non-executive functions.

- 8.5 The Committee discussed the proposal and a Member expressed concern that Gravesham Borough Council would be the lead Council for a shared licensing service. Citing examples of issues with taxi licensing, and the non-availability of Gravesham Borough Council statistics for taxi related compliance inspections and checks, he expressed the view that it would be more appropriate for Medway, as the larger service, to be the lead Council. Another Member sought reassurance that the risks had been assessed and the current high level of Medway Council's licensing service would be maintained.
- 8.6 The Chief Legal Officer responded that, through the current shared arrangements for other services, strong partnership working between the two Councils had already been established. Gravesham's Licensing Manager was already providing effective management on an interim basis and this had enabled the provision of a seamless service following the retirement of Medway's Licensing Manager. The effectiveness of the current shared legal service, with staff from each Council working within both locations, demonstrated the resilience that had been built up. The risks had been considered and it was expected that the same level of success would be achieved through a shared licensing service.
- 8.7 In response to a question regarding the legal qualifications of Gravesham's Assistant Director who would have delegated authority to exercise licensing delegations under the employee delegation scheme, the Chief Legal Officer explained that it was not necessary for the officer discharging licensing functions to be legally qualified. In response to a further question regarding a service level agreement (SLA) to provide assurance that the level of service would not be diminished, the Chief Legal Officer undertook to circulate a draft service level agreement to members of the Committee and members of the Business Support Overview and Scrutiny Committee and Cabinet. (draft SLA is attached at Appendix 4).
- 8.8 The Chairman said that she and the Vice Chairman had sought clarification when the option for Gravesham to be the lead Council for a shared licensing service had first been proposed, and had been reassured that it was not simply a cost cutting measure. The licensing policies of each Council would remain in place and the shared service would be properly monitored to ensure that service standards were maintained.
- 8.9 The Committee agreed to:
- a) recommend to Full Council that option one set out in paragraph 5.1 of the agenda report is agreed whereby Medway Council shall delegate responsibility for the discharge of its Licensing Service non-executive functions to Gravesham Borough Council;
 - b) recommend to Full Council that all non-executive licensing delegations currently with the Chief Legal Officer can also be

exercised by Gravesham Borough Council's Assistant Director (Communities);

- c) recommend that Cabinet agree to delegate authority to 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 Licensing Service;
- d) recommend to Cabinet that option one set out in paragraph 5.1 of the agenda report is agreed whereby Medway Council shall delegate responsibility for the discharge of its Licensing Service executive functions to Gravesham Borough Council; and
- e) recommend to the Leader and Cabinet that all executive licensing delegations currently with the Chief Legal Officer can also be exercised by Gravesham Borough Council's Assistant Director (Communities).

9. Financial Implications

- 9.1 If agreed by Members, the Licensing Services staff in post at Medway Council would transfer to Gravesham Borough Council's payroll on 1 November 2018. The current total staffing budget for Medway Council is £189,038 (including on costs). The Medway Council Licensing Manager post will not form part of the savings to be made by the shared service as this saving has already been taken by Medway. Further savings are anticipated as part of a shared service, particularly through efficiencies brought about by digitalisation.
- 9.2 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 Licensing Team in order to ensure that all officers are in the correct posts in order to maximise their expertise across the shared working arrangement.
- 9.3 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:
 - 9.3.1 IT costs of setting up access to the other's systems, plus potentially new IT equipment to enable better facilities for staff.
 - 9.3.2 Property and facilities costs – there may be a need to acquire additional desks and chairs, etc. to ensure that all officers can be accommodated at each site.
 - 9.3.3 It is not anticipated that there will be any redundancy costs at this stage as all officers will be transferred across to Gravesham Borough Council. However, this may need to be considered moving forward, should a revised structure identify posts that are not required.

10. Legal Implications

- 10.1 Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the majority of licencing and registration functions cannot be the responsibility of the Leader and Cabinet. These matters are dealt with by the Licensing and Safety Committee and its Sub-Committees under delegations by Full Council.
- 10.2 A limited number of licensing functions are executive functions – for example scrap metal dealers licensing.
- 10.3 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.
- 10.4 Medway Council's Full Council will consider whether to make a delegation of its Licensing Service functions to Gravesham Borough Council. The delegation must be formally accepted by Gravesham Borough Council, and once accepted, Gravesham will become statutorily responsible for Medway's licensing service functions as though it were its own functions in terms of the administration and enforcement services. Each authority will retain their current decision making powers. The Licensing and Safety Committee has agreed to recommend Full Council to delegate all non-executive Licensing functions already delegated to the Chief Legal Officer to GBC's Assistant Director (Communities) also to facilitate the day-to-day work of the team and the Chief Legal Officer to monitor performance on behalf of Medway Council. It is recommended that Cabinet delegate the executive licensing functions referred to to GBC's Assistant Director (Communities) A copy of an extract from the Scheme of Delegations, section 6.15, is attached as Appendix 2 and a flow chart showing how Medway and GBC's delegations mirror each other is attached as Appendix 3.
- 10.5 The final shared service agreement will need to reflect the arrangements made for the shared service as set out in the reports and decision notices and in particular the monitoring and reporting requirements will need to be sufficiently detailed to ensure that Medway can continue to operate their licensing and overview and scrutiny committees, having sufficient access to staff, resources and information to discharge functions retained by them.

- 10.6 In the interim, a partnership/joint-working arrangement has been made pursuant to section 113 of the Local Government Act 1972, which allows a local authority to place any of its officers, who consent to the arrangement, at the disposal of another local authority on such terms as may be agreed between the parties. The making of agreements with other local authorities for the placing of staff at the disposal of those local authorities is a local choice function and may therefore be either a matter for the Leader and Cabinet of Full Council depending on local arrangements.
- 10.7 The Local Authorities (Goods & Services) Act 1970 allows local authorities to contract with each other for the supply of any goods or materials, the provision of any administrative, professional or technical services, the use of any vehicle, plant or apparatus and the placing at the disposal of any person employed in connection with the vehicle or other property in question. The parties can also contract with each other in the interim for the provision of back office functions related to the operations of their licensing teams.

11. Recommendation

11.1 Cabinet is requested to:

- 11.1.1 note that the Licensing and Safety Committee has agreed to recommend Full Council that option one set out in paragraph 5.1 of the report is agreed whereby Medway Council shall delegate responsibility for the discharge of its Licensing Service non-executive functions to Gravesham Borough Council.
- 11.1.2 note that the Licensing and Safety Committee recommended to Full Council that all non-executive licensing delegations currently with the Chief Legal Officer can also be exercised by Gravesham Borough Council's Assistant Director (Communities).
- 11.1.3 agree that option one set out in paragraph 5.1 of the report is agreed whereby Medway Council shall delegate responsibility for the discharge of its Licensing Service executive functions to Gravesham Borough Council.
- 11.1.4 agree that all executive licensing delegations currently with the Chief Legal Officer can also be exercised by Gravesham Borough Council's Assistant Director (Communities).
- 11.1.5 agree to delegate authority to 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 Licensing Service.

12. Suggested reasons for decisions

12.1 It is anticipated that option 1 will bring the following benefits:

- Added resilience across the two authorities. There will be a larger pool of officers covering both authorities providing additional resilience to cover sickness absence/vacancies or increased workload should this be required.
- Availability of specialist skills across both authorities leading to increased efficiency; potential for a reduced requirement for external support from contractors, etc.
- Sharing of best practice in the delivery of Licensing Services.
- Expansion of knowledge base of individual.
- Accelerated progress in digitalisation which will bring further efficiencies.

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Appendices

Appendix 1 – Business Case

Appendix 2 – Extract from Scheme of Delegation

Appendix 3 – Flow Chart of Delegations

Appendix 4 – Draft Service Level Agreement

Background Papers:

Report to Licensing and Safety Committee – 26 June 2018

<https://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=42373>

Report to Business Support Overview and Scrutiny Committee – 5 July 2018

<https://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=42549>