

COUNCIL

19 OCTOBER 2023

LEGAL SERVICES STRUCTURAL REVIEW AND BUDGET ADDITION

Portfolio Holder: Councillor Zoë Van Dyke, Portfolio Holder for Business Management

Report from/author: Bhupinder Gill, Assistant Director Legal and Governance

Summary

The Council operates a mixed market model for the provision of legal services. Thus, the Council seeks to be self-sufficient in those areas of law which are encountered frequently and seeks external support for those areas which are more highly specialist or infrequently encountered. This provides the greatest flexibility over resources and most economical operating model. The service is arranged into two teams, the People team supporting mainly Children's and Adults Directorate, and the Place supporting the other two directorates, in addition to providing a shared service to Gravesham Borough Council.

The service has encountered an increasingly challenging recruitment and retention landscape, exacerbated since the pandemic and the growth of the homeworking model. The service is dangerously reliant on locum lawyers. Despite having some very talented locum lawyers, the inherent fragility places the service and the Council at a high risk from increased costs, inconsistent application of the law, rapid and regular resource level fluctuations and wasted resources in recruitment and training of replacement lawyers.

This paper reports on the findings of the MedPay review, proposes a reorganization of the services to better aid retention, succession planning, training and consistent quality of advice, and the challenges presented to meet the resource gap due to a significant increase in demand by Children's Services.

This would require an addition to the revenue budget for Legal Services of £656,887, however this would represent a reduction on the projected cost to Medway of operating the service in the current model in 2023/24 which is forecasting an overspend in excess of £1 million.

The report was previously considered by the Cabinet on 8 August 2023, the decisions of which are set out at section 9 of the report.

1. Recommendation

- 1.1. The Council is asked to agree the changes to the Legal Services' 2024/25 revenue budget as set out in paragraph 14.4 of the report.

2. Budget and policy framework

- 2.1. Cabinet is responsible for ensuring that expenditure remains within the Council's approved budget; it remains the responsibility of Council to approve additions to the budget. The decision is within the Council's policy and budget framework including the Council Plan subject to the provision that changes to the services budget are approved by Council.

3. Background

- 3.1. The Council's inhouse legal service operates a mixed market model for the delivery of a comprehensive legal service to the Council. The service seeks to retain sufficient capacity to handle median volumes of work for those areas of law that a unitary authority will regularly seek advice upon. Those areas of law which are highly specialised or where advice is sought infrequently are procured from external sources, as and when required. This allows the Council to have the best of mix of efficiency and efficacy.
- 3.2. The inhouse local government legal market has been challenging for many years. With reduced hierarchy levels, team sizes, training opportunities and a general deference for lawyers, the talent pool available for organisations to tap into has been diminishing. Many of the skills and experience developed in house are directly transferable to the private sector. This has occurred in two main ways, either colleagues have been approached directly by private sector operators or they have decided to enter the locum market.
- 3.3. Irrespective of the mechanism, both have reduced the size of the talent pool and following advancements in remote working brought about by the pandemic, the strength of the locum market has increased significantly. Locums now have a far greater geographical choice of where to work, who to work for and when they work. This has led to significant market premiums which in turn lures more colleagues away from inhouse roles.
- 3.4. The effects of the locum opportunities and premium are resulting in an exodus contributed to by locum agencies approaching inhouse staff directly with opportunities, alienation caused by staff seeing what their authorities are willing to pay for locums (close to twice their rate of pay when agency overheads are taken into account) and without the challenges of managing in the public sector or a political organisation. Whilst some of these factors are intrinsic to the sector and some roles, others can be ameliorated.
- 3.5. The position is further exacerbated at Medway. Following the Council's historic decision to move away from NJC terms and conditions and the implementation of MedPay, the reward offer at Medway has fallen behind many directly comparable organisations. Without a step change in approach

the service will continue in a spiral of decline and incur increasingly higher costs for agency staff.

- 3.6. The service already undertakes upstream work to generate interest in working for Medway Council. The team support local school students who wish to gain an insight into a possible career in the law. We offer work experience for two year 12 students. Additionally, we have supported a trainee lawyer employed by the Crown Prosecution Service, to have experience of a different area of law, as required by our regulator.
- 3.7. We also have close working relationship with the University of Kent. Each year we offer 4 weeks of work experience opportunities for students, the number taken on varies, between 2 to 4, dependent upon internal resources. Training contract opportunities are also shared with the university to encourage applications.
- 3.8. The university have also embarked on an innovative paralegal course, MLaw, partnering with local lawyers, which provides on the job training to students whilst studying for formal qualifications. On the job training is undertaken during academic holidays and this has the net effect of reducing the overall timeframe to qualify. We have held discussions with the university regarding this model, expressed an interest, but due to current resource constraints have delayed participation.
- 3.9. To stem the decline, start a stabilisation process and have a foundation from which we can build, it is proposed that we need to work to set of principles:
- 3.10. Reduce the offer gap (Medpay Review)
- 3.11. Review our current roles (Restructure) so that they:
 - 3.11.1. are challenging but deliverable
 - 3.11.2. Improve efficacy;
 - 3.11.3. Provide opportunities for growth and succession;
 - 3.11.4. Nurture talent and support its development;
 - 3.11.5. Encourage the move from temporary (locum) to permanent roles.
- 3.12. Revisit capacity (people team)

4. Medpay Review

- 4.1. Legal Services has also been included in phase one (the pilot) of the Council's Medpay Review, with a focus on lawyers due to the reliance on expensive locums and paralegal roles in order to develop career pathways within the service. This has involved a review and re-evaluation of the relevant role profiles and salary benchmarking against the market. The Medpay Review seeks to place the council's reward offer at the median level of those in the comparator group for roles where there is evidence that there are recruitment and retention factors resulting in high turnover or vacancy levels

and/or high locum costs. Ongoing monitoring will evidence if this presents an attractive offer.

- 4.2. The Medpay Review has evaluated and benchmarked relevant job profiles and where a recommendation for regrading has been made, this has had a knock-on effect on the hierarchy which needed to be addressed through the Council's organizational change policy resulting in proposals for the senior management roles and structure to be revised.
- 4.3. The evaluation conducted independently by colleagues in Human Resources has highlighted that the current Medway pay offer is significantly short of the market median for similar roles.
- 4.4. The proposed regrading of roles is set out below and includes the recommendations from the MedPay Review and the consequential regrading. It is to be noted that if the new pay ranges are introduced it will:
 - 4.4.1. eliminate the current market supplements save for the Senior Lawyer/Advocate which is dependent upon a new range 8 being introduced to the pay scale (due to be considered at Council in July 2023). If/ when introduced the supplement for the Senior Lawyer would be replaced by placing the role on the newly introduced range 8, although any supplement for the advocate role would remain.
 - 4.4.2. improve transparency
 - 4.4.3. ensure greater consistency of advice through an improved and stable workforce
 - 4.4.4. create a structure that will be more attractive in the marketplace and should assist to retain new staff
 - 4.4.5. enable a partial shift away from the current reliance of locums. Even with all the changes proposed, it is unlikely that we will achieve full recruitment due to market conditions as identified in section 3.4.
 - 4.4.6. provide career pathways and improve succession planning

Table 1

| Existing Role Descriptor | Current pay range | Proposed Role Descriptor | Proposed pay range* |
|--------------------------|----------------------|---------------------------------------|---------------------------------|
| Head of Legal Services | Service Manager (SM) | Head of Legal Services | Strategic Service Manager (SSM) |
| Assistant. Head of Legal | 7 | Legal Services Manager Place/ People* | SM |

| | | | |
|----------------------------|---|---------------------------------------|----------------------|
| Principal Lawyer | 6 | Role redesignated | NA |
| Senior Lawyer/ Advocate | 7 | Senior Lawyer/ | 8 |
| | | Advocate | 7+ market supplement |
| Lawyer | 6 | Lawyer | 7 |
| Trainee Solicitor | 3 | Trainee Solicitor | 4,5 |
| Senior Legal advisor | 4 | Paralegal (Career Graded) 2,4,5 | |
| Paralegal | 3 | | |
| Legal Support Assistant | 2 | | |

*Note, changes to role descriptors and number of posts at each grade are discussed below.

- 4.5. Both the structural review and the MedPay Review have been concluded subject to final agreement, financial approval and formal engagement with the team. However early engagement with the legal services team has taken place, where some of the principles identified above were shared and these have, so far, been well received.
- 4.6. Under Phase one of the MedPay review a limited number of roles across the council have been reviewed in those services where there are significant recruitment and retention issues and thus the services are carrying high levels of vacancies. The savings generated from those vacancies have enabled in year implementation of the revised pay scales, however the ongoing revenue requirements would need to be addressed as part of the annual budget setting process.
- 4.7. Moving forward, phase two of the MedPay review has commenced which will cover a larger volume of roles and where the challenges associated with recruitment and retention are less acute and tapered further for phase three. As with phase one, for phases two and three it is proposed that any additional requirements for in year funding are met from vacancy savings within the service and that future requirements are addressed through the budget build process.

5. Restructure

- 5.1. Legal services has a funded establishment of 43.20 FTE (associated budget of £2,064,372), split over three teams

- Head of Legal Services 1.00 FTE
- Legal practice team (including the PA to the AD) 2.00 FTE
- the People team 22.27 FTE

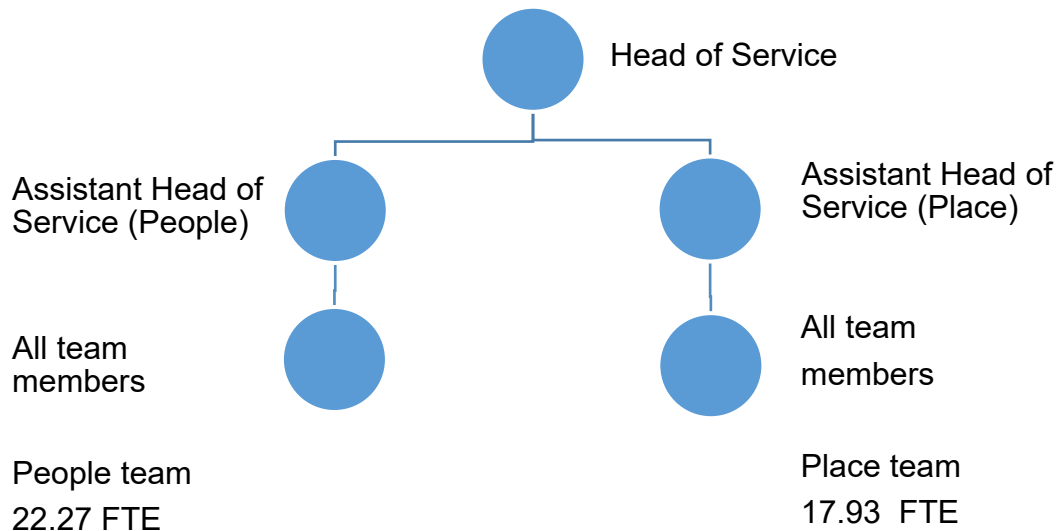
- the Place team

17.93 FTE

The people team undertakes work broadly related to the local authority's functions in relation to children, adults and education. The place team undertakes work related to planning, highways, litigation, property, licensing and generally anything not within the scope of the people team and provides a shared service to Gravesham Borough Council. Gravesham currently contributes 43% of the total cost of the place team (this is subject to review).

- 5.2. Historically, the service was restructured to reduce levels of hierarchy and produce a streamlined team structure (Table 2 below). The reasons and rationale for those proposals are not rehearsed in this paper, save to say that the model is deemed no longer fit for purpose.

Table 2.



- 5.3. As can be seen from table above, each Assistant Head of Service is the only officer in each team with supervisory/ management responsibility for all members of their team, each of which consists of approximately 20 FTE. Those responsibilities include the plethora of managerial duties, i.e., 121's, approval of leave, expenses, return to work interview, PDR meetings, colleague support and development. Additionally, because these individuals are the more senior members of their team, they also carry a legal caseload of the more complex/ sensitive matters.

- 5.4. The demands placed on these colleagues are proving to be untenable, unrealistic, and unfair, thus they need to be addressed. Creating the right conditions for success must start by addressing the issues facing the Assistant Heads of Service, their roles and their design.

- 5.5. The current roles within legal services are:

- Administrative officer
- Legal Assistants
- Legal Support officers
- Paralegal

Trainee solicitor
 Solicitor
 Principle Solicitor / Senior advocate
 Assistant Head of Service
 Head of Service

Only the latter two roles have any formal supervisory / managerial responsibility. However, it must be recognised that many senior officers in the service undertake supervisory activity without recognition in their current job descriptions or reward offer.

- 5.6. The span of control for the two Assistant Heads of Service is too broad with approximately 20 reportees for each role. This number needs to be reduced to enable the post holders to provide quality support but also that those who seek support can be assured of receiving timely, quality, considered support that not only meets their immediate needs but also helps to support their development and aid succession planning.
- 5.7. It is proposed to create a revised level in the structure, that of Senior lawyer. These posts will replace the current posts of principal lawyer and will be positioned between Assistants Heads of Service and Lawyers. They would have first line responsibility for supervising/ supporting junior colleagues. These roles would also be a first step into people management, responsible for small pods of colleagues, working on similar work types to provide for growth, talent nurturing and development. They will contribute to succession planning, career development, increased levels of senior resilience and capability. Further, the roles would allow continued development of a professional specialism.
- 5.8. It is also proposed to rationalise the current role descriptors, from nine to seven aiding greater clarity of the role, remit, and seniority of the officer holder:

| Existing Role Descriptor | Proposed Role Descriptor |
|----------------------------------|---------------------------|
| Head of Legal Services | Head of Legal Services |
| Assistant Head of Legal Services | Legal Services Manager |
| Principal Lawyer | Senior Lawyer |
| Senior Advocate | Advocate |
| Lawyer | Lawyer |
| Trainee Solicitor | Trainee Solicitor |
| Senior Legal advisor | Paralegal (Career Graded) |
| Paralegal | |
| Legal Support Assistant | |

5.9. Place Team.

- 5.10. Proposed spans of responsibility are set out in the **Appendix 2**, with new 'pods' focused on legal specialisms (Planning, Litigation and Contracts).
- 5.11. It is proposed the role of Principal Lawyer (Place), currently vacant, would be redesignated to be one of the new senior lawyer roles.

- 5.12. There are already two senior lawyer roles in the team (property and contracts), the latter being vacant. These roles would be reconfigured into the new senior lawyer roles with formal supervisory responsibility, they will be significantly like the existing senior lawyer roles and subject to due process, post holders are likely to be assimilated into the new roles.
- 5.13. The overall result on the establishment is a net zero FTE impact on the establishment. No redundancies are proposed.

5.14. People team.

- 5.15. Proposed spans of responsibility are set out in **Appendix 2**. It is proposed three new 'pods' are created, one focusing on pre-proceedings work and the other two on matters to be issued/already in court. This will help to create greater levels of consistency of advice and approach, natural management of cases and exposure of junior colleagues to more challenging cases in a supportive environment allowing for professional development and succession planning.
- 5.16. Further, preparation of such cases requires a significant level of administrative/ paralegal support, thus it is proposed each pod would be supported by paralegals. These roles would be career graded and would incorporate the role of legal assistant (at a trainee level), thus creating a future pipeline of colleagues who may wish to train as lawyers and improve capacity for the lawyers to focus on legal issues.
- 5.17. The post of Principal lawyer (People) is currently vacant. This role would be redesigned to be one of the new senior lawyer roles and complemented by a further two similar roles. There are no existing senior lawyer roles in the team, and it proposed that two existing lawyer posts be redesignated as senior lawyers.
- 5.18. Each of the two teams dealing with proceedings work would be supported by a lawyer (advocate), to undertake the majority of that team's advocacy. There is already one existing Senior Advocate role, whose title and reporting line would be revised, to report to one of the new senior lawyers, and the creation of a new lawyer (Advocate) role.
- 5.19. The overall result has a net zero FTE impact on the establishment. No redundancies are proposed.

6. Capacity

- 6.1. Whilst the Covid pandemic is largely behind us, it has left a legacy in attitudes to work and responding to the needs of vulnerable children. The length of time it is taking for proceedings to be concluded through the courts is taking much longer than pre-pandemic times. This is creating workload pressures with fewer proceeding concluding but new proceedings being issued.

6.2. There is also an increase in the number of children being looked after, over the last 2 years:

- care cases have doubled (see proceedings, dark blue line below)
- pre court cases have trebled (see pre proceedings, red line below),
- court of protection work, generally involving adults has doubled (see green line below)

| People Team | Apr 21 | M | J | J | A | S | O | N | D | J | F | M | Apr 22 | M | J | J | A | S | O | N | D | J | F | M |
|---------------------|--------|----|----|----|----|----|----|----|----|----|----|----|--------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Proceedings | 65 | 60 | 64 | 60 | 59 | 69 | 75 | 85 | 82 | 87 | 91 | 97 | 99 | 104 | 111 | 106 | 100 | 108 | 116 | 118 | 114 | 116 | 117 | 122 |
| SEN | 45 | 51 | 57 | 51 | 54 | 61 | 71 | 57 | 57 | 65 | 65 | 59 | 67 | 36 | 38 | 38 | 51 | 75 | 81 | 65 | 62 | 69 | 73 | 59 |
| Pre-Proceedings | 14 | 18 | 22 | 23 | 19 | 17 | 17 | 20 | 22 | 26 | 28 | 36 | 34 | 33 | 36 | 38 | 34 | 32 | 28 | 29 | 29 | 36 | 38 | 43 |
| Court of Protection | 16 | 17 | 15 | 16 | 16 | 17 | 26 | 26 | 25 | 27 | 28 | 28 | 29 | 29 | 30 | 32 | 33 | 37 | 39 | 41 | 35 | 35 | 36 | 39 |
| Adults | 19 | 19 | 19 | 19 | 20 | 23 | 24 | 23 | 24 | 25 | 27 | 27 | 27 | 13 | 14 | 14 | 16 | 17 | 18 | 21 | 18 | 21 | 23 | 23 |
| Adoption | 7 | 18 | 18 | 11 | 22 | 11 | 11 | 22 | 19 | 15 | 19 | 20 | 19 | 17 | 11 | 10 | 11 | 5 | 9 | 8 | 6 | 9 | 10 | 9 |

*The numbers will not read across with those kept in Childrens Services due to data upload and synchronizing issues.

6.3. None of these are not showing any signs of reducing. To cope with increases in demand, significant additional temporary capacity has had to be bought in. The net effect for legal services is that our caseload for both pre proceedings and cases issued has increased significantly. In order to manage this, we have had to take on:

- a locum senior childcare practitioner to support the Assistant Head of Service and
- also additional four locums in excess of our establishment.

6.4. Average times of dealing with such cases is approximately 45 weeks in Kent and this rate of turn around places us circa mid table nationally. The proposal is to increase overall capacity and through structural changes, detailed above, to improve consistency of advice at pre proceedings and those in court, and then further between case preparation and advocacy with the creation of mini pods.

7. Options

- 7.1. Option 1 – Do nothing. The service will experience ever growing difficulties in retention and recruitment, placing additional strains on finances, consistency of advice and responding to client demand. This is not seen as a viable medium-term option.
- 7.2. Option 2- implement MedPay only. This will reduce the reward offer gap in the marketplace and make some of the more junior roles more attractive. The revised reward offer will be to the median offered in the current market and will not guarantee recruitment to all roles. Further, there are no obvious routes for career progression and thus we are unlikely to retain new recruits beyond

an initial period whilst they gain some experience to enable career advancement.

- 7.3. Option 3 implement MedPay and restructure. This will allow for a revised reward offer combined with clearer career advancement pathways and role responsibilities that facilitate personal growth and realistic expectations. Demand from clients in exceeding current capacity will have to be met by locums with the risks outlined in the report.
- 7.4. Option 4, implement MedPay, restructure and additional capacity. This provides the benefits of option 3 above and also caters for known additional capacity in a financial envelope with is smaller than utilising temporary resources. Whilst there is no guarantee that the proposed changes will be viewed favourably by the market to attract new colleagues, it is believed they will slow down the levels of attrition being experienced. This option is recommended.

8. Advice and analysis

- 8.1. Subject to the addition of funding to the Legal Services budget, it is proposed to implement the recommendations of the MedPay review, to restructure the service and to add capacity to the teams. This will allow for a revised reward offer combined with clearer career advancement pathways and role responsibilities that facilitate personal growth and realistic expectations. This will also cater for known additional capacity in a financial envelope with is smaller than utilising temporary resources. Whilst there is no guarantee that the proposed changes will be viewed favourably by the market to attract new colleagues, it is believed they will slow down the levels of attrition being experienced.
- 8.2. For the reasons set out above, Option 4 is the preferred option.
- 8.3. A Diversity Impact Assessment (DIA) has not been prepared. All recruitment and reorganisation decisions will be undertaken within the Council's employment policies.

9. Cabinet

- 9.1. The Cabinet considered the report on 8 August 2023 and agreed the following:
- 9.2. The Cabinet noted the outcome of the Medpay Review recommendations.
- 9.3. The Cabinet approved the proposed restructure, as set out in section 6 of the report.
- 9.4. The Cabinet approved the creation of the additional posts, as set out in the report.
- 9.5. The Cabinet recommended to Council the changes to the Legal Services' 2024/25 revenue budget, as set out in paragraph 14.4 of the report.

- 9.6. The Cabinet agreed to delegate authority to the Assistant Director Legal and Governance, in consultation with the Portfolio Holder for Business Management, to take any consequential changes arising from the implementation of the above decisions.
- 9.7. The Cabinet agreed that any in year revenue requirements for the implementation of Medpay reviews across the Council would be funded through vacancy savings across the Council and that the ongoing requirements would need to be addressed through the budget setting process.

10. Risk management

- 10.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|-------------------------------------|---|--|-------------|
| Failure to recruit and retain staff | Unable to attract to vacant post and retain existing colleagues | Implement outcomes of MedPay review | All |
| | Continued strain on financial resources | Implement outcomes of MedPay review to reduce gap between current reward offer and market expectations | All |
| | Unable to retain team members | Provide clear career advancement pathways in conjunction with an improved reward offer | All |
| Overspend | Revised structure may not resolve resourcing issues and the service may continue to overspend | Robust performance and management arrangements | BIII |

For risk rating, please refer to the following table:

| Likelihood | Impact: |
|-------------------|----------------|
| A Very likely | I Catastrophic |
| B Likely | II Major |
| C Unlikely | III Moderate |
| D Rare | IV Minor |

11. Consultation

- 11.1. A draft copy of this report has been shared with union officials, team members, the Director for Children's and Adults Service, all of whom were asked to provide any feedback in time for consideration by the Cabinet.
- 11.2. Colleagues from Human Resources and senior colleagues within Legal services (the Head of Service and two Assistant Heads of Service) have been involved throughout the process.

12. Climate change implications

- 12.1. [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.
- 12.2. There are no direct implications arising from this report.

13. Human Resource implications

- 13.1. The proposed restructure does not involve any redundancies and therefore it is not envisaged that a full consultation process will be required although there will be engagement with staff and trade unions.
- 13.2. Engagement with recognised trade unions and colleagues in the service has taken place to introduce the business case for the proposed changes. Employees and trade union representatives will be invited to comment and make suggestions relating to revised role profiles.
- 13.3. Revised and new job profiles have been evaluated using the NJC and GLPC job evaluation schemes and these will be shared with individual postholders as part of the engagement process, with any comments or suggestions considered by management.
- 13.4. The current structure is heavily reliant on locums and a new recruitment strategy will be required in order to change this practice. Whilst there is no legal requirement to involve locums in engagement or consultation processes, a pro-active approach is being undertaken by the service to involve them in engagement meetings as the change proposals will have a direct impact on the number of locums in the future. These meetings provide an opportunity for individuals to consider whether they would wish to apply for permanent roles.

14. Financial implications

- 14.1. The 2022/23 staffing budget for Legal Services is £2,064,372. The latest budget monitoring projects an overspend of more than £1million compared to the agreed budget.
- 14.2. This report sets out changes to staffing in Legal Services that would require £656,887 (full year effect) be added to the budget for the service as follows:
- £218,915 to implementing the recommendations of the MedPay review in Legal Services, as set out in section 4 of this report,
 - £124,822 to restructure the teams, as set out in section 5 of this report, and
 - £313,150 to increase the establishment by a further 5FTE, as set out in section 6 of this report.
- 14.3. Of this increase, £178,215 relates to the Place Team, which currently operates in a shared service with Gravesham Borough Council who fund 43% of the total cost of the team (this is currently under review). Colleagues at Gravesham are being consulted on the proposals and should they agree to cover the same proportion of the expanded team as they do the existing team, the overall cost to Medway would be reduced by £76,594, reducing the total budget addition required in full year to £580,293.
- 14.4. Following the Cabinet agreeing to recommend the budget addition to Council [Decision No. 131/2023], the report is due to be considered by Full Council at this meeting. It was anticipated that the changes would be implemented with effect from 1 October 2023, meaning the impact on the 2023/24 budget would be £290,147 or £328,444, depending on the level of contribution from Gravesham Borough Council. However, it is anticipated that implementation of these proposals would reduce the in-year requirement for locum staff and that the net effect would be a reduction in the forecast overspend against the Legal Services budget. The full year effect of the restructure would need to be incorporated into the development of the budget for 2024/25.
- 14.5. The 2022/23 Capital and Revenue Budget Outturn reported to the Cabinet in June noted that the Council's general reserves had fallen to just over £10million as at 31 March 2023. The first round of revenue budget monitoring for 2023/24, presented to the Cabinet on 8 August 2023, projected an overspend of almost 17million.

15. Legal implications

- 15.1. These are contained within the body of the report.

Lead officer contact

Bhupinder Gill
Assistant Director, Legal and Governance
Bhupinder.gill@medway.gov.uk

Appendices

1. Current structure / vacancies
2. Current structure / proposed structure
3. Summary of changes

Background papers

None