

Cabinet – 12 December 2012

Legal Services – Collaborative Services

Portfolio: Councillor Towe, Finance and Personnel

Related portfolio: Councillor Arif, Business Support Services

Service: Resources – Legal Services

Wards: None

Key decision: No

Forward plan: No

1. Summary

- 1.1 The Council retains a in house legal team to support it in carrying out its functions. Traditionally the legal team deal with the most common forms of legal work that the Councils requires on a regular basis, this is because it would not represent a cost effective solution to met it legal advice needs for the Council to retain specialists in areas that are infrequently required or needed on a one off basis.
- 1.2 The level of demand for legal services is unpredictable at times as is the occasional need for specialist legal advice and thus there are occasions when external legal advice is required to support the in house team.
- 1.3 This report sets out and seeks approval for seeking the achieving of greater efficiencies by utilising one of the country's largest public sector purchasing consortiums (EM Law Share) whilst also entering into a Black Country legal services collaboration agreement. By undertaking a coordinated approach to procuring these specialist services the Council could take advantage of the economies of scale and secure a more cost effective and efficient method of accessing external legal advice.

2. Recommendations

- 2.1. That Cabinet approve the council entering into a Memorandum of Understanding with EM law share; and
- 2.2. That cabinet approve the Councils continued membership of the West midlands Legal panel; and
- 2.3. That Cabinet approve the council entering into a memorandum of understanding with the three other Black Country councils.

3. Report Detail

3.1 EM LawShare

3.1.1 The Council retains a legal team of 27 full-time equivalent legal support officers comprising of solicitors, legal executives and legal clerks/assistants.

3.1.2 The areas of law that the legal team cover include:

- Planning
- Highways
- Commercial Contracts (including commercial dispute resolution and litigation)
- Construction Contracts
- Charities
- Public/Public Partnerships
- Employment law
- Conveyancing
- Social care
- Education
- Regeneration
- Civil Litigation
- Criminal Litigation and prosecutions
- Local Government constitutional and General Public law

3.1.3 Birmingham City Council set up a West Midlands legal panel for the use of external solicitors approximately 3 years ago. Successful tenderers were designated as Council's non exclusive preferred suppliers of external legal services under a framework contract. This framework contract was entered into by most of the Councils in the West Midlands including Walsall Council and is due to be refreshed following a procurement exercise. There has been in existence for some time prior to this arrangement an equivalent framework set up by the East Midlands councils known as EM LawShare which has been procured, this framework was one of the first frameworks set up and is generally regarded as one of the most successful public sector purchasing frameworks for legal advice nationally. Walsall can enter into this EM LawShare at same time as retaining its membership of the West Midlands Legal panel.

3.1.4 The benefits of the EM LawShare include:

- By entering into such a partnership approach to procurement it will provide an opportunity for the council to have speedier access to external legal advice without the need to seek multiple tenders every time external legal advice is needed.
- EM LawShare is one of the largest purchasing frameworks of this type in the country. It has over 50 public sector bodies as members and these are spread out beyond the traditional East Midlands border and include all forms of public sector bodies.

- It is one of the few purchasing frameworks that not only will cover solicitors but also barrister's advice and assistance. Traditionally barristers have always been excluded from legal services purchasing frameworks due to the nature of the type of work they do. Barristers are usually highly specialised court advocates who specialise in a small area of law; they also have higher rights of audience over and above that of solicitors which means that they can appear in the higher courts where solicitors are only permitted to appear in the lower courts. EM LawShare is currently running a procurement exercise to add barrister's services to the framework.
- Incorporated free/limited cost training programme, lawyers and professional Council officers have to meet certain training needs professionally as well to keep up to date with the increasingly rapid changes in the local government legal world.
- It has a proven track record of delivering high-quality services, estimated savings of up to 20% of the costs of external legal support.

3.2 Black Country Legal Services Collaboration agreement

- 3.2.1 The third element of the proposal is to create greater joint working between the Black Country Councils. It is proposed that the four Black Country councils enter into a Memorandum of Understanding which sets out a mutual support and collaboration approach.
- 3.2.2 All the councils retain their own in-house legal teams to meet the daily needs of the organisation, as part of this process consideration is given to a shared legal legal service within the Black Country. Whilst this option remains available it is not considered to be the most economic advantageous or relevant to meet the needs of each individual organisation. This is because the number of lawyers needed by the organisation is influenced by many factors including what day-to-day legal advice it requires, as well as any major projects and or major pieces of work that arise during the course of the working year.
- 3.2.3 The merging of legal resources does not reduce the demands placed upon it as a requirement for legal support is defined by the needs of the organisation. Merging legal teams merely means that same level of legal assistance is required from the same level of lawyers but with no organisational control over what lawyers work for it and what level of resources it has available at any given time, the options for savings therefore are restricted.
- 3.2.4 The management of legal teams is done on a hierarchical specialism and experience model with the most senior and experienced lawyers acting as the management of the legal team. This is the structure adopted both in the private sector and public sector with the managing lawyers role being to not only in their own capacity be a legal adviser to the organisation but to give guidance and support to the more junior lawyers in carrying out their advice and assistance role.

3.2.5 Where internal legal departments struggle is often capacity due to limited resources and or lack of the relevant specialism. Capacity issues can be one-off projects or an area of law that has not been dealt with by that particular Council in the past. When another Council has experience of doing these recently it represents an opportunity for them to share their knowledge and experiences. This can often reduce the need to seek external legal support, as well as on occasions completely remove the need to seek the external legal support. Also other examples include where Councils obtained a specialist barristers opinion on a subject that they are dealing with, this opinion whilst not being directly applicable to the other authorities as each opinion is based on the facts of the individual matter, can assist other authorities when encountering similar problems if shared.

3.2.6 One of the examples of where Councils struggle due to their limited in-house legal capacity is to cover all of the court hearings that can happen on a weekly and daily basis, the most common way of dealing with this is for the Councils to instruct a barrister and/or a private law firm to represent the council in the hearing. Whilst this has been the traditional approach it is not always the most cost-effective, as where other Councils already have one of their lawyers in that particular court they may be able to represent another council whilst there.

3.2.7 The Memorandum of Understanding provides for:

- Greater mutual support through sharing of specialist knowledge and availability of lawyers from any of the Black Country authorities to give guidance and shared knowledge on areas that they have experience in.
- Sharing of legal resources including law library facilities, draft and precedent documentation, specialist external legal support opinions and working practices.
- A facility for the Black Country councils to undertake legal work on behalf of the other Black Country councils.
- Using each other's lawyers to take on court hearings in their local court, in-house legal teams costs are generally between 80% to 200% lower than external legal advisers.

4. Council priorities

The arrangements will continue to support the Council across the board in its priorities.

5. Risk management

From time to time the council requires specialist legal advice in order to protect its legal interests. The use of appropriate specialist will facilitate the obtaining of appropriate specialist advice in order to achieve this.

6. Financial implications

Councils legal costs per an hour are generally between 80% to 200% lower than private sector commercial rates, EM LawShare offers competitive commercial rates for the private sector that can achieve levels of up to 20% saving on external legal costs. The use of external lawyers will only be undertaken when approved by the Head of Legal and Democratic Services. When deemed appropriate an assessment as the value for money will be undertaken before the use of the external specialist support will be undertaken.

7. Legal implications

The proposal will provide support to the council where in house resources are not sufficient or specialist advice is required.

8. Property implications

There are no proposals within the report that impact on property.

9. Staffing implications

There are no proposals within the report that impact on staffing.

10. Equality implications

Suppliers of legal advice and assistance services will be required to comply with the Council's equality policies.

11. Consultation

11.1 The board of EM LawShare which manages the framework.

11.2 The four Black Country authorities Chief Executives and Leaders.

11.3 The Councils Corporate Management team.

Background papers

None

Author

Stuart Portman
Head of Law Non Contentious
☎ 654821
✉ portmanstuart@walsall.gov.uk

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Rory Borealis
Executive Director
Resources

4 December 2012

Handwritten signature of Councillor Chris Towe, featuring a stylized 'C' and 'T' in a cursive script.

Councillor Chris Towe
Portfolio holder – Resources

4 December 2012