

	<h2>Policy and Resources Committee</h2> <h3>2 December 2014</h3>
Title	Governance arrangements
Report of	Andrew Travers – Chief Executive
Wards	All
Status	Public
Enclosures	Appendix 1: Action Plan
Officer Contact Details	Andrew Travers andrew.travers@barnet.gov.uk 020 8359 7850

Summary

At its meeting on 14 October, the Committee received a report setting out the findings of the external investigator, Ms Claer Lloyd-Jones, appointed to examine the events leading up to the unsatisfactory Annual Council meeting on 2 June, and to make recommendations to improve corporate governance.

The report was referred to the full Council meeting which took place on 4 November, and Council approved the recommendations in the report. This report summarises the actions taken since then to implement the Council's decision.

Recommendations

1. That the report be noted
2. That the Chief Executive, in consultation with the Leader, be authorised to agree any changes to the Inter-Authority Agreement with Harrow Council, and the side agreement, necessary to implement the proposals in this report.

1. WHY THIS REPORT IS NEEDED

- 1.1 As set out in the earlier report to Committee, Ms Claer Lloyd Jones was appointed as an independent external investigator to examine the events leading up to the unsatisfactory Annual Council meeting on 2 June 2014, and to make recommendations for improvements to the Council's governance arrangements. Ms Lloyd Jones produced two reports. The first examined and analysed the events leading up to the Annual meeting, made findings, and made consequential recommendations. The second set out a number of different options for strengthening future governance arrangements, particularly with respect to the role of the Monitoring Officer, governance support, and the shared legal service, HB Public Law.
- 1.2 The earlier report to Committee was referred to and considered by full Council on 4 November. Council agreed all the recommendations set out in the first report of Ms Lloyd-Jones. They were:
- That the Governance Team implements the same high level of control over its council reports as it does over other committee reports
 - That it takes early legal advice before drafting reports, as well as taking legal advice for clearance purposes
 - That HB Public Law (HBPL) provides early legal advice outlining the legal principles to be involved in council reports
 - That HBPL extends its actions of clearance within 5 days towards council reports in the same way as it does towards committee reports
 - That the Governance Team informs HBPL well in advance of the subject matter of reports likely to be submitted to council meetings
 - That Barnet and Harrow review and sign the 2nd or side agreement to the Inter-Authority Agreement (the IAA)
 - That Barnet looks carefully at the options to strengthen its governance arrangements including looking at the contract with HBPL, addressing the issue of professional clienting of the IAA, addressing the issue of lawyers not being on site at Barnet, considering the implications of having exercised Section 101 of the Local Government Act 1972 to delegate all its legal functions to Harrow.
- 1.3 In relation to Ms Lloyd-Jones' second report, Council agreed the following further recommendations:
- That the Council retains its own Monitoring Officer
 - That a limited scope of high level corporate legal support is removed from the scope of the IAA with Harrow Council, and is instead provided "in-house" and/or through separate external arrangements
 - That the Council's Integrated Assurance Function is retained
 - That the outcome of negotiation with Harrow Council in respect of these matters is reported to this Committee in due course, along with detailed proposals for amendments to the Shared Legal Service IAA
- 1.4 These recommendations are tabulated in an action plan which sets out the current position, and which is attached as Appendix A.

- 1.5 This report considers in further detail the position with respect to the three issues identified by Ms Lloyd Jones in her second report, namely the Monitoring Officer role, governance support, and the shared legal service HBPL.

The Monitoring Officer role

- 1.6 At the time that Ms Lloyd-Jones wrote her reports, the Monitoring Officer was the Assurance Director. Since then the Council has appointed an experienced and legally-qualified person to discharge the Monitoring Officer role on an interim basis, pending the recruitment of a new Assurance Director.
- 1.7 At its meeting on 11 November the Remuneration Committee agreed the role profile for the Assurance Director post, and determined that a legal qualification was a desirable (although not essential) criterion against which applications for the post should be considered. The recruitment process for a new Assurance Director is now underway. It is intended that the interim arrangements should remain in place until such time as the new Assurance Director takes up his or her post.
- 1.8 Whether or not a legally qualified person is appointed, it is intended that the Director be designated as the Monitoring Officer, and that there will be “in-house” legally-qualified support directly available to them. The level of that support will be determined taking into account whether or not a legally qualified person is appointed.
- 1.9 These arrangements will ensure that the Council retains its own Monitoring Officer, and will either have a legally qualified Monitoring Officer, or will have a Monitoring Officer who has quick and comprehensive access to strategic and confidential legal advice on behalf of the Council, in accordance with the recommendations made by Ms Lloyd-Jones in her second report. That high level strategic legal support which will be provided “in-house” will therefore be taken out of the scope of the Inter-Authority agreement with Harrow Council, in accordance with the Council’s decision (see paragraph 1.18 below). However, and consistently with the current arrangements which have worked satisfactorily, support through HB Public Law with respect to the Deputy Monitoring Officer role will continue to be available.
- 1.10 Ms Lloyd-Jones made recommendations with respect to the clearance of council reports, which are set out in paragraph 1.2 above. Under the current interim arrangements, all reports to Council are cleared by the interim Monitoring Officer, which ensures that adequate and timely legal input is received by the Governance Team. These arrangements will be reviewed on the appointment of a new Assurance Director.

Governance support

- 1.11 Ms Lloyd-Jones noted in her second report the importance of the function of governance support, the vital need for staff in the team to have access to speedy and correct advice, including legal advice, at short notice, the importance of updates and training, and therefore the need for a senior management focus to ensure consistent high performance. Her report noted that an option would be to narrow the focus of the Monitoring Officer role to ensure that other calls on his or her time are minimised, to that end.

- 1.12 The appointment of a new Assurance Director, together with the provision of additional in-house legal support focussed only on governance issues and high level legal advice will ensure that the necessary senior management focus is given to this function to enable consistent high performance, as recommended by Ms Lloyd-Jones.

The Shared Legal Service (HBPL)

- 1.13 The appointment of a new Assurance Director and in-house legal support will address the issues relating to the support previously provided by HBPL to the Monitoring Officer, and to the need for direct control of the high level corporate legal issues that matter most to the Council, identified by Ms Lloyd-Jones. The remaining issues raised by Ms Lloyd Jones relate to the clienting by Barnet of the HBPL contract, and the delegation of legal functions to Harrow under Section 101 of the Local Government Act 1972.
- 1.14 As noted in the earlier report, the Inter-Authority Agreement provides for oversight of the shared legal service by a Strategic Monitoring Board which includes from Barnet's side the Chief Executive, the Assurance Director, and the Contract Manager. In the past, the Assurance Director has acted as the Relationship manager. On a day-to-day basis, the clients of the service are the Chief officers and their staff who use it.
- 1.15 Clienting, according to Ms Lloyd-Jones, "includes taking ownership of the service delivered overall, and is not just looking at outputs and performance indicators but also at the quality and effectiveness of legal advice and legal work. If Barnet chooses the option of a legally qualified MO then this would form part of his/her responsibilities.Without a legally qualified client, it is difficult to challenge whether the legal advice given is wrong". The appointment of a legally qualified Assurance Director, and/or high level in-house legal support will ensure that the clienting of the shared legal service arrangement includes an element of professional legal assessment, in accordance with the recommendations made by Ms Lloyd-Jones.
- 1.16 The final recommendation in Ms Lloyd-Jones first report (see paragraph 1.2 above) refers to "addressing the issue of lawyers not being on site in Barnet". As the second report acknowledges, that is an issue best addressed as part of contract monitoring arrangements. But HBPL have made it clear they are willing to be on site to the extent that Barnet requires, and indeed HBPL staff do work on site in Barnet as required already.
- 1.17 Finally, the second Lloyd Jones report suggests a review of the Section 101 delegation to Harrow.
- 1.18 The purpose of the delegation was to ensure that HBPL had the necessary power to act on behalf of Barnet in their day-to-day operational and transactional work – for example in court proceedings. Delegation of legal powers for that purpose is not unusual, and should not be contentious. What would be a concern would be an unduly wide delegation, empowering Harrow rather than Barnet to take future decisions relating to the provision of legal services to Barnet, or which prevented Barnet from implementing the arrangements set out in this report, or from taking its own legal advice where the interests of Barnet and Harrow are in conflict. The scope of the delegation will therefore be clarified, in discussion with HBPL and Harrow, to make it

clear that the delegation does not extend to strategic decisions on the provision of legal services, or to the Monitoring Officer function or the provision of corporate legal advice, or to any case in which Barnet identifies a possible conflict of interest with Harrow. That clarification, which is likely to involve only minor changes to the Agreement, and to be uncontentious so far as HBPL are concerned, will address the concerns raised by Ms Lloyd-Jones relating to the use of Section 101. It is recommended that the Chief Executive, in consultation with the Leader as the Chairman of this Committee, be given the delegated authority to agree the changes to the Agreement, and to the side agreement, which are necessary to implement the proposals in this report.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The arrangements summarised in this report are designed to improve the robustness of the Council's governance arrangements and for the provision for the delivery of legal services.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The report of the external investigator set out options for improving governance arrangements and provision for the delivery of legal services. The arrangements agreed by Council and summarised in this report are considered to meet the recommendations of the external reports and to best reflect the requirements of the organisation for robust corporate governance.

4. POST DECISION IMPLEMENTATION

- 4.1 This report sets out how the decision of Council on 4 November is currently being implemented. Some further negotiation and discussion is still to take place with Harrow, and further decisions with respect to the precise scale and scope of the "in-house" legal support to the new Assurance Director remain to be taken, following appointment to that post.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The report is concerned with ensuring that the Council's corporate governance arrangements are robust, and that the Inter-Authority Agreement with Harrow Council meets the Council's requirements for legal services and is monitored effectively.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 The proposals set out within this report can be contained within the relevant existing budgets of the Council.

5.3 Legal and Constitutional References

5.3.1 The Council needs to make appropriate arrangements for corporate governance, including via the appointment of a Monitoring Officer with resources sufficient to deliver statutory functions.

5.3.2 The Inter Authority Agreement for the delivery of legal services delegates the provision of the function from Barnet to Harrow. The proposals recommended in this report will remove an element of legal support from the scope of the Inter Authority Agreement in favour of direct provision by Barnet, and will clarify the scope of the Section 101 delegation of legal functions to Harrow.

5.4 Risk Management

5.4.1 The Council's structure and operating model as a Commissioning Council are novel, as are the arrangements for the delivery of legal services. The Council's risk management arrangements have acknowledged this through the stages of organisational design and implementation.

5.4.2 The steps being taken as described in this report reflect the crystallisation of some of those risks, and the lessons learned and the changes made as a result.

5.5 Equalities and Diversity

5.5.1 The proposals set out in this report are not considered to have equalities and diversity implications

5.6 Consultation and Engagement

5.6.1 As set out above, discussions with HB Public Law and Harrow Council on the proposals in this report have begun.

6. BACKGROUND PAPERS

6.1 None