

	<h2>Policy and Resources Committee</h2> <h3>17 February 2015</h3>
<p style="text-align: center;">Title</p>	<p>Governance arrangements – Barnet/Harrow Inter-Authority Agreement</p>
<p style="text-align: center;">Report of</p>	<p>Andrew Travers – Chief Executive</p>
<p style="text-align: center;">Wards</p>	<p>All</p>
<p style="text-align: center;">Status</p>	<p>Public</p>
<p style="text-align: center;">Enclosures</p>	<p>None</p>
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<h2>Summary</h2>
<p>At its meeting on 2 December 2014, the Committee received a report setting out the actions taken following the decisions of the Council on 4 November, to improve corporate governance in the light of the findings made by Ms Claer Lloyd-Jones. Some of the actions involved changes to the Inter-Authority Agreement between Barnet and Harrow relating to the shared legal service HB Public Law which required the agreement of Harrow, and the Committee requested a further report upon those changes.</p> <p>This report sets out the changes to the Inter-Authority Agreement which have, subject to formal approval, now been agreed with Harrow. The report also provides an update on developments with respect to the future of the shared legal service, which are likely to require further changes to the Inter-Authority Agreement in future.</p>

<h2>Recommendations</h2>
<ol style="list-style-type: none"> 1. That the changes to the Inter-Authority Agreement described in the report be approved and the Chief Executive be authorised to complete the side agreement accordingly 2. That the potential involvement of the London Borough of Hounslow in the

shared legal service be noted and welcomed.

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 At its meeting on 4 November the 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 At its meeting on 2 December, the Committee noted the actions taken thus far to implement the Council's decision. This report deals specifically with the decisions which relate to the IAA – the final two recommendations in Ms Lloyd-Jones' first report, and the second recommendation agreed by the Council with respect to the second report.
- 1.5 The opportunity is also taken to provide an update for the Committee on important recent developments with respect to the shared legal service, which are likely, in due course, to involve further changes to the arrangements between Barnet and Harrow.

The Inter-Authority Agreement

- 1.6 The shared legal services arrangement between Barnet and Harrow came into effect on 1st September 2012. It is a five year arrangement, and its terms are set out in the IAA. The IAA provides that work done by Barnet's Monitoring Officer is excluded from the service provided by HBPL. However, "corporate governance" work, defined as including "Advice to Council, Cabinet, Committees ... to the extent that it is not excluded by being Monitoring Officer work" is included.
- 1.7 A side agreement was negotiated when Barnet appointed a non-legally qualified Monitoring Officer, which added acting as Deputy Monitoring Officer, and corporate, governance and Monitoring Officer support to the definition of the service to be provided under the IAA. As Ms Lloyd-Jones pointed out, the side agreement was never formally signed, but it has been agreed and operated in practice.
- 1.8 There are two principal issues relating to the IAA which need to be addressed. The first relates to the delegation of the legal function under Section 101 of the Local Government Act 1972. Ms Lloyd-Jones recommended that the implications of this be considered. The second relates to the scope of the service to be provided by HBPL. Ms Lloyd-Jones recommended 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".
- 1.9 Agreement has been reached with Harrow on both of these issues, subject to the approval by this Committee and by members at Harrow.
- 1.10 In relation to the delegation of the legal function by Barnet to Harrow, Ms Lloyd Jones said (paragraph 4.10 of her second report);

"Finally, the issue of the use of s101 of the Local Government Act 1972 to delegate Barnet's legal functions to Harrow. This seems to have been done because HBPL is delivered by Harrow, not jointly with Barnet. The IAA "carves out" MO work and functions and it was agreed that section 101 would not apply to that legal work, and therefore Barnet would be able to exercise its own legal functions in relation to MO work. This needs clarifying. It is highly unusual to have used section 101 in this manner in any event, when a contractual arrangement would suffice".

She put forward as options either revoking the delegation altogether, or limiting the delegation to routine and transactional work under the contract, excluding all corporate legal work and that carried out by or under the direction of the Monitoring Officer.

- 1.11 An amendment to the IAA which will implement the second of these options has been agreed. As set out in the previous report to Committee, 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, or from deciding to employ one or more legally-qualified persons to provide corporate legal advice in-house. Accordingly the amendment clarifies that the delegation does not extend to corporate legal work, or any other legal work, excluded from the definition of the service (see below), and does not extend to any function of Barnet as the client or commissioner of the legal service. Legal work in relation to matters on which there is a conflict of interest is already excluded from the scope of the service.
- 1.12 In relation to “high-level corporate work”, an amendment has been agreed which will exclude from the scope of the service provided by HBPL not only the work of the Monitoring Officer (which is already excluded) but also the work of any in-house legal employees. As set out in the previous report, the extent of any in-house legal provision will be determined once a new Assurance Director has been appointed, but the amendment will ensure that, whatever the scale and scope of that in-house function, it will be excluded from the scope of the IAA, and from the delegation.
- 1.13 It is intended that the agreement should continue to provide for HBPL to provide Deputy Monitoring Officer support, an arrangement which has worked well.
- 1.14 These amendments, if agreed, will be implemented through the side agreement, which will be signed as recommended by Ms Lloyd Jones.

The future of the shared legal service

- 1.15 As Ms Lloyd-Jones acknowledged in her first report, HBPL is ambitious and confident about its future. It has an informal arrangement with a private sector legal partner, Bevan Brittan. At the time of that report, it had made an application to the Solicitors Regulation Authority to establish an Alternative Business Structure (ABS), which had been granted with effect from 1st December 2014. HBPL also has a business plan which envisages that it may work for another or more than one other local authority.
- 1.16. These plans have potential implications for Barnet. The ABS is now established, as a limited company which is a separate legal entity from

Harrow or HBPL, and which may provide legal services to third parties, including third parties in the private sector. The creation of the ABS has been planned with the support of Barnet and is to be welcomed. Discussions have begun with Harrow, who are the shareholder in the ABS and who have provided loan funding, in relation to profit-share arrangements if the ABS is successful in future.

- 1.16 But in addition, plans to extend the scope of the shared legal service to other authorities are reaching an advanced stage. In particular, at the time of writing this report the London Borough of Hounslow is about to consider a recommendation that it accepts a proposal put forward by HBPL to themselves join the shared legal service. Hounslow's decision on that recommendation should be known by the time of this Committee meeting.
- 1.17 If Hounslow approve that recommendation the bi-partite arrangement between Barnet and Harrow in relation to HBPL is likely to become a tri-partite one. That will clearly have implications for the way in which the Strategic Management Board, which oversees the provision of the service, operates, and implications for the detailed financial arrangements which underpin the service.
- 1.18 However, subject to due diligence and further discussions with Harrow, the potential involvement of Hounslow is considered to be a positive development, which is consistent with HBPL's agreed business plan and which is likely to lead to the strengthening of the shared service, increased resilience, and which is to Barnet's advantage both financially and in terms of the quality of legal service provision.
- 1.19 Discussions on these issues remain at a relatively early stage. A further report will be submitted to Committee in due course with recommendations dealing with any further changes to the IAA which may be required following the establishment of the ABS, and the potential involvement of Hounslow.

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 changes to the IAA 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 If the recommendations in this report are agreed they will be implemented by the signing by Barnet and Harrow of a revised side agreement to the IAA

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 Inter-Authority Agreement between Barnet and Harrow (not for publication)

6.2 Side agreement (not for publication)