

	<p>Financial Performance and Contracts Committee</p> <p>17 December 2018</p>
Title	Performance of back office functions - Legal Services
Report of	Commercial Director
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	None
Officer Contact Details	<p>David Tatlow - Chief Legal Advisor & Monitoring Officer david.tatlow@barnet.gov.uk 020 8359 2786</p> <p>Tim Campbell - Strategic Commercial Lead tim.campbell@barnet.gov.uk 020 8359 4085</p>

Summary

This report sets out the current position of Legal Services provided through an Inter Authority Agreement with Harrow (Harrow and Barnet Public Law – HBPL). This includes the core purpose and overall performance of the service, the costs, and key challenges and planned service improvements.

Officers Recommendations

1. That the Committee notes the report and progress in approving the revised Inter Authority Agreement with Harrow.
2. That the Committee notes the details of the revised monitoring arrangements and the overview of the performance and financial position.

1. WHY THIS REPORT IS NEEDED

- 1.1 At its meeting on 2 July 2018, under Agenda Item 9, the Financial Performance and Contracts Committee agreed the approach and forward work programme to assist the Committee to plan and manage its work across the municipal year.
- 1.2 The Committee agreed to review the performance of up to two back office functions at each meeting during the 2018-19 year. It requested a report setting out the core purpose of the service, alongside the overall performance and KPIs associated with the service, the costs, and key challenges and planned service improvements where relevant.
- 1.3 The Committee agreed the timeline for a report on Legal Services for the December 2018 meeting.

2. REASONS FOR RECOMMENDATIONS

2.1 Background

- 2.1.1 In 2012 Barnet Council entered a shared service agreement for legal services with Harrow Council which commenced on 1 September 2012 for a minimum of five years, extendable for a further period of up to five years. Since 2012 Harrow and Barnet Public Law (HBPL) has enlarged its service to include the London Borough of Hounslow, Vale of Aylesbury District Council and Buckinghamshire County Council.
- 2.1.2 The Council has agreed to extend the Agreement with Harrow for a further period of five years until 1 September 2022.
- 2.1.3 Following the agreed extension, HBPL proposed a revised Agreement which deleted a number of clauses relating to the original transfer of staff and original funding method which were obsolete.
- 2.1.4 Discussions have been ongoing including key changes recommended by Barnet relating to the method of charging which will alter from hours of work 'estimated' to hours of work completed and a revision to the hourly rate to allow a contingency fund to be developed.
- 2.1.5 This increased hourly rate is the same as charged by HBPL to other client local authorities and reflects the move for Barnet only paying for the hours they use. This key change was put into effect from 1 January 2018, along with enhanced quarterly reporting.
- 2.1.6 In order to best protect the Council, specialist independent legal advice has been obtained to ensure that the new Agreement fully accords with Barnet's requirements. More recently Harrow have proposed a number of further amendments, and negotiations on the revised contract continue.
- 2.1.7 A revised Inter Authority Agreement (IAA) is expected to be signed shortly. This

will include revised TUPE arrangements at the end of the Agreement; the revised method of charging; revised termination and exit arrangements; ongoing Pension Liabilities; revised reporting and monitoring arrangements; and updated terms to reflect legislative changes such as the European Union General Data Protection Regulation.

2.1.8 Under the IAA the Council pays for the hours worked by lawyers within HBPL at a fixed rate. In addition, HBPL pass on the costs of disbursements for example all matters referred on by them with Barnet's approval to external Barristers and Solicitors plus court fees.

2.1.9 It should be noted that Barnet Homes has a separate Service Level Agreement with HBPL for legal matters relating to Tenancy Enforcement actions. Regional Enterprises (Capita Re) has a separate Service Level Agreement with HBPL for legal advice work prior to referral to the Council for decision. These are monitored and paid for separately and do not form part of this report.

2.2 Performance

2.2.1 The original IAA was monitored against a set of agreed quarterly Key Performance Indicators (KPIs). These KPIs included the service responding to enquiries in time, service user satisfaction scores, ensuring appropriately trained and accredited staff and an annual report on the use of external legal advisers. These were regularly reported as being on target.

2.2.2 The enhanced quarterly reporting under the revised IAA allows more fine-grained monthly reports on overall number of hours worked with a breakdown by work type; cost of disbursements; volume of new instructions; number of open matters; number of matters closed with total hours charged for each matter; and cost of external Barristers and Solicitors.

2.2.3 The gross total cost of legal services including external Barristers and Solicitors immediately prior to the IAA was £4.2m. In 2017/18 it was £3.8m.

2.2.4 The budget has historically been set lower than spend, due to an unrealisable income target. The outturn for 2017/18 was a £789,000 overspend. This is projected to increase to £1.2m in 2018/19 due to a combination of increased contract prices and demand for legal services.

2.2.5 The breakdown for projected costs in 2018/19 (based on half-year actuals) is shown in Fig 1.

Fig 1. HBPL Projected Costs 2018/19

	Hours	Barristers/ Solicitors	Fees	Total
Gross Total (£)	2,901,000	1,343,000	220,000	4,464,000

2.2.6 Overall, the shared legal service represents good value for money when compared with other local authority legal services. The rates are generally

within those charged in the public sector and significantly less than rates within the private sector which would be two or three times higher. However, the overall spend on External Barristers/Solicitors and fees has increased and work is underway with Departments and HBPL to review these costs.

- 2.2.7 Close monitoring and greater responsibility for demand control and budget management within service areas has identified the need for advice-only work (i.e. advice which is stand-alone and unconnected with any legal matter) to be discontinued unless line management are unable to deal with the specific question. Accordingly lists of officers with delegated authority to instruct HBPL have been produced to ensure that only these authorised officers may instruct HBPL.
- 2.2.8 Other emerging findings include that in Family Services the number of more complex child protection matters has increased which has led to increased costs. Relationships between lawyers and social workers is generally commendable.
- 2.2.9 Demand in Education Services (Cambridge Education) has doubled in the first six months of the current year linked to representation at SEN tribunals. Further work is underway to investigate and understand this significant increase.
- 2.2.10 Demand for work in Adults and Communities Service has reduced in 2018/19 when compared with 2017/18 with a consequential reduction in legal costs.
- 2.2.11 There has been an increase in the use of solicitors within the Commissioning Group which reflects the activity relating to the settlement of a range of historic commercial issues.
- 2.2.12 Demand in Property Services and Central Services within the Customer Support Group has also increased with consequential cost increases.
- 2.2.13 Demand in Planning and Regulatory Services has stayed level but use of external barristers has increased. The demand in Regeneration for Housing matters has considerably reduced.
- 2.2.14 These issues will be addressed through the regular Monitoring meetings held between HBPL, LBB Commercial and the LBB Monitoring Officer.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 None.

4. POST DECISION IMPLEMENTATION

4.1 Officers will continue to work with HBPL to strengthen monitoring and sign off the revised IAA.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 Robust budget, performance and risk monitoring are essential to ensure that there are adequate and appropriately directed resources to support delivery and achievement of council priorities and targets as set out in the Corporate Plan.

5.1.2 Relevant council strategies and policies include the following:

- Corporate Plan 2015-2020
- Corporate Plan - 2016/17, 2017/18 and 2018/19 Addendums

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

5.2.1 There are no staffing, ICT or property implications. The current budget position is a revenue overspend of £1.216m. The overspend is due to a combination of increased contract prices and demand for legal services. The budget holder is working with Service Heads to manage the pressure by identifying suitable additional resources to cover unforeseen increased demand and costs

5.3 Social Value

5.3.1 None in the context of this report.

5.4 Legal and Constitutional References

5.4.1 The council's Constitution, Article 7 Committees, Forums, Working Groups and Partnerships, sets out the functions of the Financial Performance and Contracts Committee as being responsible for the oversight and scrutiny of:

- The overall financial performance of the council
- The performance of services other than those which are the responsibility of the: Adults & Safeguarding Committee; Assets, Regeneration & Growth Committee; Children, Education & Safeguarding Committee; Community Leadership & Libraries Committee; Environment Committee; or Housing Committee
- The council's major strategic contracts including (but not limited to):
 - Analysis of performance

- Contract variations
- Undertaking deep dives to review specific issues
- Monitoring the trading position and financial stability of external providers
- Making recommendations to the Policy & Resources Committee and/or theme committees on issues arising from the scrutiny of external providers
- At the request of the Policy & Resources Committee and/or theme committees consider matters relating to contract or supplier performance and other issues and making recommendations to the referring committee
- To consider any decisions of the West London Economic Prosperity Board which have been called in, in accordance with this Article.

5.5 Risk Management

5.5.1 The council has an established approach to risk management, which is set out in the Risk Management Framework. All risks are reviewed on a quarterly basis (as a minimum) and the corporate risk register (comprising strategic and high-level service/joint risks) is reported to Policy and Resources Committee as part of the quarterly Strategic Performance Report.

5.6 Equalities and Diversity

5.6.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that due regard has been paid to equalities in:

- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advancement of equality of opportunity between people from different groups.
- Fostering of good relations between people from different groups.

5.6.2 The Equality Act 2010 identifies the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership, pregnancy and maternity; race; religion or belief; sex and sexual orientation.

5.6.3 In order to assist in meeting the duty the council will:

- Try to understand the diversity of our customers to improve our services.
- Consider the impact of our decisions on different groups to ensure they are fair.
- Mainstream equalities into business and financial planning and integrating equalities into everything we do.
- Learn more about Barnet's diverse communities by engaging with them.

This is also what we expect of our partners.

5.6.4 This is set out in the council's Equalities Policy together with our strategic Equalities Objective - as set out in the Corporate Plan - that citizens will be treated equally with understanding and respect; have equal opportunities and receive quality services provided to best value principles.

5.7 Corporate Parenting

5.7.1 This section does not apply to this report.

5.8 Consultation and Engagement

5.8.1 Not applicable.

5.9 Insight

5.9.1 Not applicable.

6 BACKGROUND PAPERS

6.1 Financial Performance and Contracts Committee on 2 July 2018
<https://barnetintranet.moderngov.co.uk/documents/s47145/FPCC%20Performance%20of%20Back%20Office%20Functions.pdf>