

| | |
|--------------------------------|---|
| | <h2>Policy and Resources Committee</h2> <h3>1 September 2016</h3> |
| Title | Proposed Extension of the Shared Service Agreement with Harrow for the Provision of Legal Services (HBPL) |
| Report of | Davina Fiore, Assurance Director |
| Wards | All |
| Status | The report and appendices are public with the exception of the appendix containing hourly rates which is exempt information which is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 as amended (commercially sensitive information). |
| Urgent | No |
| Key | Yes |
| Enclosures | Appendix 1 Key Performance Indicators Appendix 2 Exempt information on hourly rates |
| Officer Contact Details | Davina Fiore, Assurance Director davina.fiore@barnet.gov.uk |

| |
|--|
| <h2>Summary</h2> |
| <p>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. It is therefore due to expire on 1 Sep 2017. Under the terms of the agreement the parties may agree to extend the agreement for a further period of up to five years. If the agreement is not to be extended it will be necessary to start planning now for the end of the agreement and the future provision of legal services for Barnet Council. It is recommended that the agreement is extended and the delivery of legal services is delegated to the shared legal service.</p> |

Recommendations

- 1. That the Committee note that the shared service has been extended to include Hounslow and Buckinghamshire County Council and Aylesbury Vale District Council.**
- 2. That the Committee agree to extend the agreement with Harrow for a shared legal service, dated 17th August 2012, for a further period of five years until 1 September 2022 (in accordance with paragraph 2.2 of the agreement).**
- 3. That the Committee agree that the London Borough of Harrow discharge Barnet Council's function in respect of the delivery of legal services in accordance with section 101 of the Local Government Act 1972 and the inter authority agreement.**

1. WHY THIS REPORT IS NEEDED

- 1.1 In 2012 Barnet Council entered a shared service agreement with Harrow which commenced on 1 September 2012 for a minimum of five years. It is therefore due to expire on 1 Sep 2017. Under the terms of the agreement the parties may agree to extend the agreement for a further period of up to five years. If the agreement is not to be extended it will be necessary to start planning now for the end of the agreement and the future provision of legal services for Barnet Council.

2. REASONS FOR RECOMMENDATIONS

- 2.1 HBPL provide a comprehensive legal service to Barnet Council, however there is nothing to prevent Barnet using other legal providers for specific pieces of work if it wishes to do so, as has happened for example for the Brent Cross Compulsory Purchase Orders and related inquiries. The service is a shared service, and the objectives set out in the agreement are to provide a high quality service, commitment to staff and clients of the service and to long term savings and benefits to both parties.
- 2.2 This partnership approach has overall been successful. HBPL provide a full legal service across all areas of the Council's work and legal work is carried out by HBPL where possible. This has led to a reduction in the use of counsel and instructions to external firms on more routine matters. Overall HBPL meets its performance targets and clients are satisfied with the service.
- 2.3 The Performance Indicators (set out in Appendix 1) are monitored at monthly performance meetings between the HBPL Head of Legal Practice, Barnet Council's Assurance Director, who as a local government solicitor provides an "expert client" role, and the Commercial Performance and Development Manager from Barnet's Commercial Team, and are then reported to the Delivery Board and the Performance and Contract Management Committee. In addition there are regular meetings of the Strategic Monitoring Board under the contract which consists of the Chief Executives of Barnet and Harrow, and the relevant Directors, and this also considers performance information. A

summary of the performance information which has been reported to Performance and Contract Management Committee is set out in Appendix 1.

- 2.4 There have of course been issues which have needed to be resolved, and the partnership approach to problem resolution set out in the agreement has been followed. For example, at the moment there is a national shortage of experienced planning and property lawyers, which has meant HBPL has had difficulties recruiting suitably qualified staff in these disciplines. However HBPL have added market supplements to the posts and have ring fenced the existing team to existing clients, to ensure that Buckinghamshire County Council joining the shared service has not diluted the service available to Barnet.
- 2.5 HBPL has very competitive hourly rates in comparison with private sector firms (these are set out in Appendix 2 and are exempt information not available to the press and public as they are commercially sensitive). The rate went up in 2015/16 to reflect the actual cost of Harrow providing the service. Prior to the set up of HBPL the total net budget for legal services for 12/13 was £1.69m, which included £606,000 of income generated by the service.
- 2.6 The agreement states that the parties will review the agreement after four years and that after the review they may serve written notice six months before the expiry date of their intention to extend the agreement. However if the agreement were not to be extended Barnet would need more than six months to make alternative legal service delivery arrangements for Barnet. At the end of 2015/start of 2016 officers carried out a review of the inter authority agreement, which resulted in the Council purchasing fewer hours for the financial year 16/17 than in previous years. If the recommendation for the extension of the agreement is agreed, there will be an annual review of the service which will include consideration of future options for delivery of the service.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Setting up an in house legal department at Barnet. This is not recommended. There would be significant set up costs and there are benefits of being part of a larger shared service: management costs and the costs of overheads are shared; lawyers can specialise rather than be generalists; sharing learning from experience gained at other councils (subject to rules on client confidentiality); sufficient work for HBPL to recruit some specialists into the shared service; better operational flexibility to cover leave periods and peaks in workload; and HBPL has greater purchasing power than a smaller department.
- 3.2 Carrying out a tendering exercise either in accordance with the Council's Contract Procedure Rules on the open market or as a call off contract from an existing public sector legal framework. This is not recommended because HBPL is a shared legal service and the agreement is an inter authority agreement which comes within the TECKAL exemption to procurement rules. Its objective is a collaborative relationship to provide a high quality service, commitment to staff and clients and to deliver savings and benefits to both parties. It does not exist to make a profit and so its hourly rates are very

competitive. (see Appendix 2). Under the terms of the agreement with Harrow any budget surplus is either reinvested in the service or shared between Barnet and Harrow.

4. POST DECISION IMPLEMENTATION

- 4.1 If the recommendation is approved Barnet will formally notify Harrow Council that we have agreed an extension of the agreement.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Access to good legal advice is central to achieving all of the council's priorities. Continuing with a shared legal service is in line with the council's vision to be a commissioning council. It also accords with the council's duty to obtain best value.

5.2 Resources

- 5.2.1 The net budget for the Joint Legal Service is £2m and includes £780k of income generated by the service. Since 2013/14, savings totalling £300k have been made from the budget. In 2015/16 the service overspent by £320k mainly due to a shortfall in income.

- 5.2.2 The Joint Legal service provides a fixed number of hours of legal service, currently 36,960 for 2016/17. The number of hours used by delivery units has remained relatively stable over the past two years. Expenditure on externalised legal support has reduced year on year.

- 5.2.3 Expenditure on overheads for support services and office accommodation is charged annually as part of the hourly rates and is currently estimated at £262k.

- 5.2.4 The service receives approximately £350k in income annually mainly from property sales with a small amount from court costs awarded.

5.3 Legal and Constitutional References

- 5.3.1 Pursuant to a [decision](#) of the Cabinet Resources Committee dated 4 April 2012 and a [decision](#) taken by the Director of Corporate Governance in consultation with the Cabinet Member(s) (Executive Function) dated 17 August, 2012 the Council entered into an Inter Authority Agreement with the London Borough of Harrow for the establishment of a shared legal service.

- 5.3.2 The approved arrangement for the Joint Legal Service was that the London Borough of Harrow would discharge this Council's function in respect of the delivery of legal services in accordance with [Section 101 of the Local Government Act 1972](#) and of the [Local Government \(Arrangements for the Discharge of Functions\) \(England\) Regulations 2000](#).

- 5.3.3 On [11 September 2012](#) Barnet's Full Council agreed that the constitution be amended to reflect this and to authorised the London Borough of Harrow Head of Legal/Practise Director Joint Legal Service to institute, defend or participate in any legal proceedings on behalf of the Council, to authenticate

any document necessary to any legal proceedings on behalf of the Council, and to undertake land and property transactions and fulfil relevant Contract Procedure Rules responsibilities on behalf of the Council. If Committee agrees to extend the inter authority agreement with Harrow Council, the delegation of these legal functions for the extended period would also need to be confirmed.

5.3.4 [Annex A to the Responsibility for Functions](#) (Council Constitution) sets out the terms of reference of the Policy and Resources Committee and states that the committee is responsible for the strategic direction of the council including strategic partnerships.

5.3.5 The agreement is an inter-authority agreement which comes within the TECKAL exemption to the procurement rules.

5.3.6 Under Appendix 1 to the [Contract Procedure Rules](#) Policy and Resources Committee as the relevant theme committee can agree to the extension of the agreement.

5.4 **Risk Management**

5.4.1 Extending the existing agreement is low risk as there are established processes and procedures for obtaining legal advice and decision making. A tendering exercise leading to a change in the identity of the service provider would be higher risk as there would initially be a lack of knowledge of Barnet's policies, procedures and decision making, and in addition there would also be a financial risk as the cost of the legal services required would be likely to be significantly increased.

5.5 **Equalities and Diversity**

5.5.1 HBPL are committed to equalities and diversity in their employment practises and are experienced at giving legal advice on any equality and diversity implications of decisions.

5.6 **Consultation and Engagement**

5.6.1 Harrow have been consulted on the extension of the agreement and have confirmed their willingness for this to take place.

6. **BACKGROUND PAPERS**

6.1 Cabinet Resources Committee 4 April 2012

Report:

<http://barnet.moderngov.co.uk/Data/Cabinet%20Resources%20Committee/201204042000/Agenda/Document%203.pdf>

Minutes:

<http://barnet.moderngov.co.uk/Data/Cabinet%20Resources%20Committee/201204042000/Agenda/Document%202.pdf>

Delegated Powers Report 17 August 2012

<http://barnet.moderngov.co.uk/documents/s5263/1777%20-%20Legal%20Shared%20Service%20with%20the%20London%20Borough%20of%20Harrow.pdf>

Appendix One – KPI (Key Performance Indicator) Year on Year Performance

| KPI No | KPI description | Frequency | Polarity | Target | Outturn | | |
|----------|--|-------------|------------------|--------|---------|---------|---------|
| | | | | | 2013/14 | 2014/15 | 2015/16 |
| HBPL/C1 | Acknowledge emails within 1 working day | Quarterly | Bigger is Better | 95.0% | 100.0% | 100.0% | 95.7% |
| HBPL/C2 | Reply to emails within 5 working days | Quarterly | Bigger is Better | 95.0% | 100.0% | 100.0% | 97.9% |
| HBPL/C3 | Reply to fax or letter within 10 working days | Quarterly | Bigger is Better | 95.0% | 100.0% | 100.0% | 100.0% |
| HBPL/C4 | New Instructions Assessed and acknowledged within 3 working days | Quarterly | Bigger is Better | 95.0% | 100.0% | 95.2% | 95.2% |
| HBPL/C5 | Respond to non-urgent requests within 10 working days | Quarterly | Bigger is Better | 95.0% | 100.0% | 100.0% | 100.0% |
| HBPL/C6 | Respond to further instructions on existing matters within 5 working days | Quarterly | Bigger is Better | 95.0% | 100.0% | 100.0% | 97.3% |
| HBPL/C7 | % of draft committee reports and delegated power reports cleared within 5 working days | Quarterly | Bigger is Better | 95.0% | 96.1% | 97.7% | 98.8% |
| HBPL/C8 | Overall satisfaction | Quarterly | Bigger is Better | 90.0% | 98.2% | 96.0% | 90.0% |
| HBPL/C9 | Satisfaction with performance | Quarterly | Bigger is Better | 90.0% | 100.0% | 93.0% | 90.0% |
| HBPL/C10 | Satisfaction with quality of work | Quarterly | Bigger is Better | 90.0% | 98.2% | 93.0% | 100.0% |
| HBPL/C11 | Satisfaction with time taken | Quarterly | Bigger is Better | 90.0% | 100.0% | 100.0% | 90.0% |
| HBPL/C12 | Satisfaction with timeliness of response and completion | Quarterly | Bigger is Better | 90.0% | 100.0% | 100.0% | 80.0% |
| HBPL/C13 | Appropriate accreditation of the service | Annually Q1 | Bigger is Better | 100% | 100.0% | 100% | 100.0% |
| HBPL/C14 | Ensure all staff are appropriately qualified | Annually Q3 | Bigger is Better | 100% | 100.0% | 100% | 100.0% |