



## Policy & Resources Committee

30 September 2021

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| <b>Title</b>                   | <b>Proposed Extension of the Shared Service Agreement with Harrow for the Provision of Legal Services (HBPL)</b>  |
| <b>Report of</b>               | Chairman of the Policy and Resources Committee  |
| <b>Wards</b>                   | All   |
| <b>Status</b>                  | Public (with the exception of the Appendix 2 containing hourly rates which is exempt information which is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 as amended (commercially sensitive information)). |
| <b>Urgent</b>                  | No  |
| <b>Key</b>                     | Yes   |
| <b>Enclosures</b>              | Appendix 1 – Key Performance Indicators<br>Appendix 2 (Exempt) – Legal Services Hourly Rates  |
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### Summary

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. The agreement was extended in 2016 for a further five years with the current arrangement due to expire on 31 August 2022.

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. Officers have considered alternative options and, following an assessment of those options, it is recommended that the agreement is extended, and the delivery of legal services is delegated to the shared legal service.

## **Officers Recommendations**

- 1. That the Committee agree to extend the agreement with Harrow for a shared legal service for a further period of five years until 1 September 2027 (in accordance with paragraph 2.2 of the agreement).**
- 2. 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.**
- 3. That the Committee delegate authority to the Executive Director Assurance to:**
  - (a) commence formal review of the arrangements;**
  - (b) seek agreement in principle to the extension from the London Borough of Harrow;**
  - (c) review the existing inter authority agreement to ensure that it is fit for purpose; and**
  - (d) negotiate and agree any amendments required.**

### **1. WHY THIS REPORT IS NEEDED**

#### **Background**

- 1.1 HBPL provide a comprehensive legal service to Barnet Council. However, the Council can use other legal providers for specific pieces of work if it wishes to do so (e.g. work relating to Brent Cross Cricklewood, instructing counsel in a particular matter, etc.) The service is a shared service between Barnet and Harrow, but Harrow are the lead authority in relation to the operational delivery of the service. An Inter Authority Agreement (IAA) is in place to set out the shared objectives which are, in summary, to:
  - Provide a high-quality service, commitment to staff and clients of the service and to long term savings and benefits to both parties
  - Adopt a systematic approach to partnership working and problem resolution
- 1.2 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 broadly satisfied with the quality of the service.
- 1.3 In addition to providing legal services to the London Borough of Barnet and the London Borough of Harrow, HBPL also provide services to the London Borough of Hounslow and Slough Borough Council.

#### **Process Improvements**

- 1.4 Several process improvements have been implemented over the last 18 months:
  - Introduction of quality meetings with services and directorates to deal with matters and issues not reported via KPIs

- Improvements to contract management and monitoring arrangements (including regular contract management meetings, escalation of performance issues, etc.)
- Review of all legal budget codes and responsible officers
- Updated Legal Services content HBPL - Home (sharepoint.com) including:
  - Up to date contact lists for HBPL staff
  - Order forms for legal services including instructions and legal code
  - Income process maps
- Distribution of legal income to services from 2021/22 (i.e. property (legal fees, surveyor fees, solicitor fees), highways, CAFT, planning, community safety)

## **Performance Indicators**

- 1.5 The following performance indicators are monitored at quarterly Contract Management Meetings attended by the HBPL Head of Legal Practice, the Head of Governance (Client Lead for the HBPL contract) and the Contracts and Partnership Lead, Assurance Directorate. Performance information is also reported quarterly to the Financial Performance and Contracts Committee. A summary of performance information regularly reported is as follows:
- Overall number of hours worked with breakdown by client and work type;
  - Cost of disbursements by client and work type;
  - Volume of new instructions in that month by client and work type;
  - Overall number of open matters by client and work type;
  - Number of matters closed by client and legal work type with total hours charged for each matter; and
  - Cost of external Barristers and Solicitors in a quarter by client and legal work type.
- 1.6 During 2020/21 and into 2021/22 discussions have taken place with directorates and services regarding the quality of services provided by HBPL as service quality is not a measure captured in KPIs. Overall feedback has been positive across all services and directorates. Where issues have been identified these have been or are being addressed between HBPL and the services, with oversight from the council's Contracts Lead and Client Lead.
- 1.7 Bi-monthly contract Management Meetings are in place which regularly review: quality issues; risks, issues and complaints; and intranet content.

## **Value for Money**

- 1.8 HBPL has a very competitive blended hourly rate<sup>1</sup> in comparison with private sector firms. Exempt Appendix 2 details comparative hourly rates. Since the start of the IAA hourly rates for legal services have been increased in line with inflation.

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<sup>1</sup> A blended hourly rate means that Barnet pay a single rate for legal services, rather than a scaled rate dependent on experience and/or seniority.

- 1.9 Overall spend on legal services is set out in the Resources section below.
- 1.10 An objective of the current IAA is to deliver savings and benefits to both parties. It does not exist to make a profit and so its hourly rate is very competitive. Under the terms of the agreement with Harrow any budget surplus is either reinvested in the service or shared between Barnet and Harrow. Details of the surplus received is set out in the Resources section below.

### **Other Considerations**

- 1.11 In addition to the budget surplus share, the Council benefit from being part of a shared service in the following ways: reduced 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.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 The Council are required to use legal services in the discharge of their functions and responsibilities to ensure that the Council acts lawfully and that the Council's interests are safeguarded. These arrangements should achieve an appropriate balance of value for money and quality. Alternative options have been evaluated and a preferred option is recommended.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The Council have the option to undertake a procurement exercise for the provision of legal services. An open market tender exercise in accordance with the Council's Contract Procedure Rules could be undertaken, or a call off contract from an existing public sector legal framework could be used. This is not recommended because:
- HBPL is a shared legal service which Barnet have a degree of control over;
  - The agreement is an IAA which comes within the exceptions to public contract procurement rules in Regulation 12 of the Public Contracts Regulations 2015. A procurement exercise will take time and resources to complete and there is no guarantee of achieving better value for money or delivering improvements in service quality;
  - Loss of shared budget surplus;
  - Likely to impact on Barnet's Monitoring Officer arrangements;
  - Re (Regional Enterprise Limited, a joint venture between the London Borough of Barnet and Capita for the provision of regulatory services) will be required to enter into a separate agreement with HBPL, or find an alternative provider of legal services.
- 3.2 The Council have the option to set-up an in-house legal department at Barnet. This option is not recommended because:
- There are likely to be significant set up costs including (but not limited to) project costs, staff transfers, pension costs/liabilities, accommodation costs, IT, recruitment, and training;
  - Developing an in-house service will take significant resources to deliver and there is no guarantee of achieving better value for money or delivering improvements in service quality;
  - Loss of shared budget surplus;
  - Likely to impact on Barnet's Monitoring Officer arrangements; and
  - Re will be required to enter into a separate agreement with HBPL, or find an alternative provider of legal services.

#### **4. POST DECISION IMPLEMENTATION**

- 4.1 Commence formal review of the arrangement with HBPL and seek agreement from relevant Members and officers at LB Harrow to agree in principle to extend the agreement to 2027. Following agreement in principle, LB Harrow to seek Cabinet approval to extend the arrangement.
- 4.2 Review the existing IAA to ensure that it is fit for purpose and negotiate and agree any amendments required.

#### **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 as set out in the Barnet Plan 2021 - 2025. Continuing with a shared legal service is in line with the council's priority of Clean, Safe and Well Run. It also accords with the council's duty to

obtain best value.

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

5.2.1 From 2017/18 onwards departments and services were given a delegated legal budget. Prior to this, legal services were received by departments and services on their instructions but were paid for from a central budget managed by the Commercial team. As present, legal services expenditure forms part of the council's revenue budget as it has been disbursed to departments and services. Overall expenditure on legal services over the duration of the current IAA has been as follows:

2017/18 - £3,534,411

2018/19 - £4,464,542

2019/20 - £3,536,940

2020/21 - £4,240,971

5.2.2 Details of the budget surplus received by the Council since the commencement of the shared service arrangements is as follows:

2014/15 - £67,000

2015/16 - £233,000

2016/17 - £95,000

2017/18 - £260,793

2018/19 - £510,421

2019/20 - £125,055

Current expectations are that there will be no budget surplus in 2020/21 or 2021/22 due to reduced case volumes as a consequence of Covid and HBPL's procurement of a new case management system. Future budget surplus received will be disbursed across services proportionate with legal spend.

5.2.3 Any legal income received (e.g. property (legal fees, surveyor fees, solicitor fees), highways, corporate anti-fraud, planning, community safety, etc.) is distributed back to services. Income totals are as follows:

2018/19 - £1,712,228

2019/20 - £413,808

2020/21 - £341,521

## 5.3 Legal and Constitutional References

5.3.1 Pursuant to the decisions referred to in section 6, the Council entered into Inter Authority Agreements with the London Borough of Harrow for the establishment and continuation of a shared legal service covering the period from 17 August 2012 to 31 August 2022.

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 the [Local](#)

## [Authorities \(Arrangements for the Discharge of Functions\) \(England\) Regulations 2012.](#)

- 5.3.3 The arrangement is also in accordance with section 113 of the Local Government Act 1972 which provides power for local authorities to place any of their staff at the disposal of another local authority.
  - 5.3.4 On [11 September 2012](#) a meeting of Council agreed that the Constitution be amended to reflect the delegation of functions. If Committee agrees to extend the IAA, the delegation of these legal functions for the extended period would also need to be confirmed.
  - 5.3.5 [Council Constitution, Article 7 \(Committees, Forums and Working Groups\)](#) sets out the terms of reference of the Policy & Resources Committee and states that the committee is responsible for the strategic direction of the council including strategic partnerships and effective use of resources.
  - 5.3.6 The agreement is an inter-authority agreement which comes within the exceptions to public contract procurement rules in Regulation 12 of the Public Contracts Regulations 2015.
  - 5.3.7 Under the Authorisation and Acceptance Thresholds in the [Council's Contract Procedure Rules](#), the Policy & Resources Committee as the relevant theme committee can agree to the extension of the agreement.
  - 5.3.8 The Committee must also satisfy itself that the extension of the inter-authority agreement meets the Council's best value duty under the Local Government Act 1999 to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness, as well as according with wider fiduciary duties to tax payers.
- 5.4 **Insight**
- 5.4.1 N/A
- 5.5 **Social Value**
- 5.5.1 N/A
- 5.6 **Risk Management**
- 5.6.1 Risks will be effectively managed in line with the Council's corporate risk management approach, including via the Council's Client Lead and Contract Manager for the service, and the Strategic Monitoring Board set up pursuant to the inter authority agreement.
  - 5.6.2 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

## 5.7 Equalities and Diversity

- 5.6.1 HBPL are committed to equalities and diversity in their employment practices and are experienced at giving legal advice on any equality and diversity implications of decisions.
- 5.6.2 An Equalities Impact Assessment was conducted in relation to the shared services agreement at its outset, and which contained a phased milestone approach to reviewing equality impacts of the proposals. Any equality issues identified were addressed through an agreed monitoring process.

## 5.8 Corporate Parenting

- 5.7.1 N/A

## 5.9 Consultation and Engagement

- 5.9.1 The London Borough of Harrow have been consulted on the extension of the agreement and have confirmed their willingness for this to take place.
- 5.9.2 The London Borough of Harrow have undertaken that any staff placed at the disposal of the Council under section 113 of the Local Government Act 1972 will have been duly consulted prior to being placed at the Council's disposal

## 6. BACKGROUND PAPERS

- 6.1 Cabinet Resources Committee, 4 April 2012, Legal Shared Service: [Meeting of Cabinet Resources Committee on Wednesday 4th April, 2012, 8.00 pm \(moderngov.co.uk\)](http://moderngov.co.uk/Meeting-of-Cabinet-Resources-Committee-on-Wednesday-4th-April-2012-8.00-pm)
- 6.2 Delegated Powers Report 17 August 2012  
[Decision - 1777 - Legal Shared Service with the London Borough of Harrow \(moderngov.co.uk\)](http://moderngov.co.uk/Decision-1777-Legal-Shared-Service-with-the-London-Borough-of-Harrow)
- 6.3 Council, 12 September 2012, Report of the Head of Governance, London Borough of Barnet / London Borough of Harrow Joint Legal Service – Consequential Changes to the Constitution: [Agenda for Council on Tuesday 11th September, 2012, 7.00 pm \(moderngov.co.uk\)](http://moderngov.co.uk/Agenda-for-Council-on-Tuesday-11th-September-2012-7.00-pm)
- 6.4 Policy & Resources Committee, 1 September 2016, Proposed Extension of the Shared Service Agreement with Harrow for the Provision of Legal Services (HBPL): [Agenda for Policy and Resources Committee on Thursday 1st September, 2016, 7.00 pm \(moderngov.co.uk\)](http://moderngov.co.uk/Agenda-for-Policy-and-Resources-Committee-on-Thursday-1st-September-2016-7.00-pm)