

## Slough Borough Council

<b>Report To:</b>	Cabinet Urgency Procedure – Leader’s Action
<b>Date:</b>	31 <sup>st</sup> March 2023
<b>Subject:</b>	Extension of Contract for Shared Legal Service with Harrow Council
<b>Lead Member:</b>	Leader of the Council
<b>Chief Officer:</b>	Monitoring Officer
<b>Contact Officer:</b>	Stephen P Taylor
<b>Ward(s):</b>	All
<b>Key Decision:</b>	YES
<b>Exempt:</b>	No, except Appendix 2 which contains financial and business affairs of Harrow Council and is exempt by virtue of paragraph 3, Schedule 12A Local Government Act 1972.
<b>Decision Subject To Call In:</b>	Yes
<b>Appendices:</b>	Appendix 1 – Proposal by HB Public Law Appendix 2 – Confidential Appendix to Proposal.

### 1. Summary and Recommendations

- 1.1. This report recommends the extension of the provision of a shared legal service by Harrow Council under an Inter-Authority agreement until 31 March 2028 with provisions for giving six months’ notice on the contract not to be exercised in the first 12 months. The current agreement is dated 31 May 2018 and expires on 1 June 2023.

#### Recommendations:

Cabinet is recommended to:

- (i) Authorise the Monitoring Officer to extend the Inter-Authority agreement between Slough BC and Harrow Council for the provision of a shared legal service by HB Public Law until 31 March 2028 and on such terms and conditions as may be agreed in consultation with the Leader of the Council and the Executive Director of Finance and Commercial.

**Reason:** The continuation of the shared legal service will enable continuity of service provision whilst allowing the opportunity for market testing and/or consideration of in-sourcing the service to take place.

#### Commissioner Review

The Commissioner has reviewed this report and commented: *“Nothing to add to this. Well written report, very clear.”*

## 2. Report

### Background

- 2.1. At its meeting on 19 March 2018, Cabinet agreed that [delivery of the Council's Legal Services](#) would be provided by HB Public Law (HBPL) for a period to be set out in an Inter-Authority agreement. HBPL is a shared legal service hosted by the London Borough of Harrow (Harrow Council) which at that time provided legal services to a number of public authorities including Harrow Council together with the London Boroughs of Barnet and Hounslow.
- 2.2. The reason for the agreement was that a number of challenges faced the internal legal service due to the relative size of the authority, including lack of critical mass, resilience and viability, together with difficulties in recruiting suitably qualified staff. This had led to substantial use of costly private sector law firms, and to HBPL supporting SBC on a call-off basis for the previous year. The aim of using HBPL was to have access to a legal service with the capacity and specialisms to be able to provide quality advice in a timely way, reduce overall costs and provide a resilient legal service.
- 2.3. Cabinet delegated to the Director for Finance and Resources, following consultation with the Cabinet Member for Transformation and Performance, to execute an Inter Authority Agreement with London Borough of Harrow. The agreement was signed on 31 May 2018 and expires on 1 June 2023.

### Current Position

- 2.4. Four critical success factors were set by the Council at the outset which were to:
  - *Deliver savings, minimising the need to reduce front-line services to residents;*
  - *Improve efficiency, quality and capacity of the legal service;*
  - *Enhanced career opportunities for Slough BC's legal staff; and*
  - *Provide resilience to the service offering and improving customer experience/satisfaction.*
- 2.5. So far as customer experience/satisfaction is concerned, a recent survey has been carried out by the Monitoring Officer to assess this. In relation to a number of key indicators, the responses were as follows:
  - *'I am kept informed on progress' – 56.25% replied Strongly Agree or Agree (18.75% Strongly Agree), with 18.75% expressing no opinion and 18.76% disagreeing.*
  - *'Timeliness of correspondence' – 56.25% replied Excellent or Good (18.75% Excellent), with 31.25% reporting satisfactory timeliness and 6.25% stating this was below average.*
  - *'Quality of Advice' – 81.25% replied Excellent or Good (25% Excellent) and 18.75% rating this as satisfactory. There were no responses stating the quality was below average or poor.*

- *'Overall Service' – 62.5% replied Excellent or Good (25% Excellent), with 31.25% reporting this as satisfactory and 6.25% as below average.*

2.6. These service levels are acceptable but capable of improvement and it is fair to say that there were a number of compliments in relation to the work done by individuals in HBPL. Further details on results from this survey and an earlier survey are contained in Appendix 1, together with an action plan to address particular matters. Further, there does not appear to have been sufficient active contract management of the service in recent years which may have had an impact on client satisfaction levels. Nevertheless, the quality of advice received is high and represents a significant improvement on the legal service provided before the appointment of HBPL.

## Proposal

- 2.7. Accordingly, a Proposal was sought from HBPL to continue the current service and extend the Inter-Authority agreement on improved terms. A Proposal has been received and is attached at Appendix 1. Commercially confidential details such as charging rates are attached at Appendix 2.
- 2.8. In essence, the proposal summarises the work done by HBPL under the Inter-Authority agreement and self-assesses against the critical success factors referred to in paragraph 2.4 above. Improved charging rates are offered as set out in Appendix 2, subject to a minimum of 12,000 guaranteed hours being provided and paid for. Comparison data of private sector charging rates, to demonstrate value for money, and projected costs are also included.

## Financial Analysis

- 2.9. Legal costs in the period 2020/21 – 2022/23 including charges from HBPL and external firms are set out below:

	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>
	<b>£000</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>
HB Law	800	1,000	1,000	1,400
External Spend	800	600	300	100
<b>Total</b>	<b>1,600</b>	<b>1,600</b>	<b>1,300</b>	<b>1,500</b>

- 2.10. The cost of external legal work is an estimated amount as some spend may have been recorded to non-legal work, but this is not felt to represent a material amount.
- 2.11. HB Public Law are projected to charge the Council in the region of £1.4m in 2022/23 for an increased level of chargeable work. This is an increase from previous years but as the service has been more embedded less is being spent externally. Although spend is at a similar level significantly more legal advice has been required due to the increased number of property sales, procurement activity, Cabinet reports and governance. Since November 2020, when the Council's only directly employed lawyer left, HBPL has provided a lead lawyer to support CLT and member level meetings.

- 2.12. It is therefore concluded that the Council is taking a minimal risk in guaranteeing 12,000 hours work per annum in the contract as it is likely more work than this will be required. The minimal risk is worth the discount offered for the guarantee and hours would have to drop below 11,000 hours to cost more which would need a reduction in current activity of 25%.

## **Way Forward**

- 2.13. Having regard to the reduction in the charging rates and the practicalities involved in not extending the current Inter-Authority arrangements, it is suggested that the current agreement be extended for a further five years but with an option for the council to terminate after 18 months on giving six months' notice of termination, in order to carry out market testing and explore alternative ways of providing the service in order to assure itself that it is carrying out its duty to provide best value.

## **Options considered**

- 2.14. In view of the timescale, it is not realistic or practicable to simply let the Inter-Authority agreement lapse. To bring the service back in-house would entail recruitment of legal staff to carry out the legal work of this Council or to use external legal firms. It is understood that no HBPL staff would TUPE transfer as the work is shared out amongst the many lawyers employed by HBPL. For a new team to be in post by the end of May 2023 is not a feasible proposition. To achieve the establishment of a new legal team would take at least 12 months in order to establish case management systems, recruit staff and deal with work in progress.
- 2.15. Alternatively, consideration could be given to transferring the legal service to another local authority provider. HBPL is not the only provider of legal services to the Council. Reading BC provide a shared service for the Berkshire Authorities, including Slough, in relation to children's legal work so that may be an avenue worth exploring. There does not appear to be any appetite at present to establish a Berkshire-wide shared legal service, with previous arrangements between two of the Berkshire authorities being disbanded in recent years. There are other county wide services but not geographically convenient.
- 2.16. Finally, it would be possible to establish a panel of firms to carry out this Council's legal work under call-off arrangements, and there are such existing framework contracts elsewhere in place, but that would require a full procurement exercise to be undertaken preceded by market testing which, again would be more of a long-term exercise and would be likely to be significantly more expensive than the current arrangements. In any event, the Council is currently able to utilise HBPL's framework procured via the London Borough Legal Alliance, where it is necessary for external firms to be used on specific matters.

### **3. Implications of the Recommendation**

#### *Financial implications*

- 3.1. It is projected that the Council will spend in the region of £1.4m with HBPL in 2022/23, based on a current projection of legal work, including disbursements which includes Counsel advice. If there are no guaranteed hours provided by the Council and the contract is only extended by one-year, charges will increase by an inflationary amount. This would mean an approximate total cost, if usage remained the same, of £1.5m in 2023/24.
- 3.2. If the Council guarantees 12,000 hours with various safeguards in place to ensure HBPL are only recovering staff costs incurred and puts in place a five year contract a discounted rate as set out in the confidential appendix will be provided, reducing this cost to around £1.3m based on current projected work. This arrangement is being offered on the basis that HBPL can plan its staffing resources more accurately than is possible without a guarantee.
- 3.3. All legal costs are recharged to the commissioning department and covered from within their overall budgets. Charges relating to property disposal are charged against the proceeds of sale and are not charged to the Council's revenue budget.

#### *Legal implications*

- 3.4. An Inter-Authority agreement is entered into under the provisions of section 101 of the Local Government Act 1972, and the Local Government (Arrangement for the Discharge of Functions) (England) Regulations 2000. These provisions permit the Council to delegate functions to another local authority. In this case, officers in HBPL will have delegated authority to:
  - (a) institute, defend and participate in any legal proceedings where action is necessary to give effect to decisions of the Council or where such action is necessary to protect the Council's interests.
  - (b) sign documents where they are necessary to any legal proceedings or procedure or to give effect to any resolution of the Council in any tribunal or court.
  - (c) sign any document necessary to give effect to any decision of the Council.
- 3.5. The Monitoring Officer also has delegated authority to undertake these functions and can authorise HBPL to affix the Council's seal to any document that requires sealing.
- 3.6. Such an agreement between two local authorities is not a procurement and so is not subject to a procurement process.

#### *Risk management implications*

- 3.7. The risk of not continuing the contract is referred to in the report. The risk of not meeting the guaranteed hours provision set out in the Proposal is also referred to in the contract.

#### *Environmental implications*

- 3.8. There no significant environmental implications.

### *Equality implications*

- 3.9. HBPL has set out its career development opportunities in Appendix 1, which was one of the intended benefits of the arrangement. This includes career grading and career development from entry level support roles to senior management, an apprenticeship and trainee programme and a wellbeing programme. HBPL has a diverse workforce in terms of age, gender and ethnicity, which represents the diverse populations of the Boroughs it works for.

### *Procurement implications*

- 3.10. As stated in the report, an inter-authority agreement is not considered to be a procurement. The proposed break clause enables market testing or alternative suppliers to be considered in which case there may be procurement implications to be considered at that stage.

## **4. Background Papers**

None