

Slough Borough Council

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| Report To: | Cabinet |
| Date: | 26 February 2024 |
| Subject: | Contract for Shared Legal Service with Harrow Council |
| Lead Member: | Cllr Dexter Smith - Leader of the Council |
| Chief Officer: | Stephen P Taylor - Monitoring Officer |
| Contact Officer: | Stephen P Taylor |
| Ward(s): | All |
| Key Decision: | YES |
| Exempt: | NO |
| Decision Subject To Call In: | YES |
| Appendices: | NONE |

1. Summary and Recommendations

- 1.1. This report recommends the continuation of the provision of a shared legal service by Harrow Council under the Inter-Authority agreement dated 1 June 2023 and expiring on 31 March 2028.

Recommendations:

Cabinet is recommended to endorse the continuation of the provision of a shared legal service by Harrow Council under the Inter-Authority agreement dated 1 June 2023.

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

Commissioner Review

“This is a helpful and considered report which shows that the Council should be open to changing its arrangements for legal services. It may be appropriate to bring the service fully in house, to enter into an arrangement with a different local authority legal services consortium or to outsource some or all of the service to the private sector. Before doing so significant market analysis will need to be carried out alongside an assessment of the current service and the costs of transition. Extending the current arrangements with HB Law to give time for that exercise and to allow the newly appointed monitoring officer to engage with the issues is supported by the commissioners.”

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. The agreement was signed on 31 May 2018 and expired on 1 June 2023. On the 31 March 2023, under the Cabinet Urgency Procedure, the Monitoring Officer was authorised to extend the agreement until 31 March 2028 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. Those terms and conditions were duly finalised and the agreement was entered into on 1 June 2023. The agreement is terminable on 6 months notice which can be served on 1 April or 1 October of each year of the agreement.
- 2.4. The first point at which the Council can serve a break notice to terminate the agreement is the 1 April 2024 and the purpose of this report is to consider whether that should be done.

Current Position

- 2.5. 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.*
- 2.6. HBPL provides quarterly reports and data on its performance. This includes key updates, successes, risks, financial performance, high value/risk litigation update, details of compliments and complaints, client feedback and training delivered.
- 2.7. In the last quarterly report, HBPL confirmed it had maintained its Lexcel Accreditation following inspection in November 2023, with no areas of non

compliance and 19 areas of best practice. Successes in the last quarter included completion of disposal of 5 properties as part of the Council's asset disposal project, totalling nearly £7m and supporting with the setting up of a Procurement Network across Slough and three London Boroughs to prepare for the introduction of the Procurement Act and provider selection regime.

- 2.8. So far as customer experience/satisfaction is concerned, a survey was carried out by the Monitoring Officer in December 2022 to assess this. This survey was repeated in December 2023. In relation to a number of key indicators, the responses were as follows:

'I am kept informed on progress'

| | December 2022 | December 2023 |
|-------------------------|--------------------------|--------------------------|
| Strongly agree or agree | 56% (19% strongly agree) | 48% (12% strongly agree) |
| No opinion | 19% | 16% |
| Disagreeing | 19% | 36% |
| No response | 6% | 0% |

'Timeliness of correspondence'

| | December 2022 | December 2023 |
|-------------------|----------------------|----------------------|
| Excellent or Good | 56% (19% Excellent) | 44% (excellent) |
| Satisfactory | 31% | 20% |
| Below average | 6% | 36% |
| No response | 6% | 0% |

'Quality of Advice'

| | December 2022 | December 2023 |
|-----------------------|----------------------|----------------------|
| Excellent or Good | 81% (25% Excellent) | 64% (12% Excellent) |
| Satisfactory | 19% | 28% |
| Below average or poor | 0% | 8% |

'Overall Service'

| | December 2022 | December 2023 |
|-------------------|----------------------|----------------------|
| Excellent or Good | 63% (25% Excellent) | 52% (12% Excellent) |
| Satisfactory | 31% | 28% |
| Below average | 6% | 20% |

- 2.9. The deterioration in service levels is disappointing and the Monitoring Officer is working with the Head of Legal at Harrow LBC and colleagues in the different service areas to see how these can be improved.

- 2.10. It is, however, also fair to say that there were a number of compliments in relation to the work done by individuals in HBPL and this is echoed in a survey carried out by HB Public Law itself in the Autumn of 2023. This sought feedback across the four local authorities served by Harrow LBC with 85% of respondents indicating an overall satisfaction of 4 or 5 out of 5. In their survey, the practice is seen as providing a cost effective service, with support, professional respect and commitment to public service particularly valued. Issues of concern included the need for additional client training, continuity of staff and handover procedures,

accessibility, need for advice to be pragmatic and better focused on outcome for client and greater clarity on charges. HBPL accepts there is more to do to ensure that clients are kept informed and there is timely allocation of work and progress on case work. This has been a particular issue in teams with high turnover of staff or whether there are recruitment pressures leading to reliance on agency workers or more junior staff.

- 2.11. HBPL is currently consulting staff and contract managers on its 2024-2027 Business Plan which will include a new set of key performance indicators which relate to:
- (a) Continued arrangements for sharing services
 - (b) Meeting savings requirements and cost reductions
 - (c) Satisfaction ratings
 - (d) Reduction on reliance on locum staff
 - (e) Retention of trainees and staff satisfaction
 - (f) Transparency around gender and ethnicity workforce data; and
 - (g) Meeting excellent categories in the LGA Equality Framework for diverse and engaged workforce.
- 2.12. HB Public Law also have specific plans for 2024 which include:
- (a) Developing a bespoke leadership and management development programme
 - (b) Introducing a new management competency framework
 - (c) Introducing a brief bites governance leadership programme to build on the previous “essentials of local government” programme
 - (d) Establish closer links with CILEX to develop local government focused apprenticeships
 - (e) Contributing to the LLG programme to promote local government as a career of choice
 - (f) Develop a policy for training solicitors via the SQE route
 - (g) Identify a medium term plan for our legal case management system
 - (h) Maintain Lexcel accreditation following full inspection in 2024.
- 2.13. Collectively, these measures should improve performance, particularly in relation to recruitment and retention which is a national issue across local government. Also important is active contract management of the service which has been constrained in recent years due to lack of capacity. Nevertheless, the quality of advice received is high and represents a significant improvement on the legal service provided before the appointment of HBPL.

Financial Analysis

- 2.14. Legal costs in the period 2019/20 – 2023/24 including charges from HBPL and external firms are set out below:

| | 2019/20 | 2020/21 | 2021/22 | 2022/23 | 2023/24 |
|----------------|--------------|--------------|--------------|--------------|--------------|
| | £000 | £000 | £000 | £000 | £000 |
| HB Law | 800 | 1,000 | 1,000 | 1,400 | 1,343 |
| External Spend | 800 | 600 | 300 | 100 | 122 |
| Total | 1,600 | 1,600 | 1,300 | 1,500 | 1,465 |

- 2.15. 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.
- 2.16. HB Public Law charged the Council in the region of £1.4m in 2022/23 for an increased level of chargeable work. Based on the information currently to hand, it is anticipated that the projected charge for 2023/24 is likely to be slightly less, partly due to the reduced charges based on the Council committing to a minimum number of hours. There has been a small increase in external spend, partly due to the asset disposal project and the advice on the SUR sites from the external firm previously involved with advising on these sites. Although spend is at a similar level overall, 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 also provided a lead lawyer to support CLT and member level meetings.
- 2.17. So far as the reduction in rates as a result of the tendering prior to the renewal of the Agreement is concerned, the table below shows that the anticipated reduction of £100k a year on a comparable hours basis has been achieved. Further, there has been an increase in the number of hours worked which confirms that the guaranteed minimum of 12,000 hours a year is realistic.

| | Chargeable Time Billed 2022/23 | Value of Time Billed 2022/24 (£000) | Comparative charge 2023/24 (£000) | Variance (£000) |
|--------------|---|--|--|----------------------------|
| Total | 14,450 | 1,363 | 1,254 | -£109 |

- 2.18. The anticipated hours to be charged in 2023/24 is expected to be in the region of 14,500 although this is subject to forecasting discussions with the service areas.

Way Forward

- 2.19. Comparative costs from other in-house providers have been obtained in a soft market testing exercise which repeated the soft market testing carried out last year and summarised in the March 2023 to Council. It is still the case that HB Public Law provide the best value in comparison.
- 2.20. Consideration has also been given to bringing the service in-house. For the very reasons it was outsourced in the first place, this is not thought to be a feasible proposition at present. To bring the service back in-house would entail the recruitment of legal staff to carry out the legal work of this Council and still entail the use of 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.
- 2.21. Recruitment of in-house lawyers is extremely difficult at present and a number of the Berkshire Authorities, and neighbouring London Authorities including H B Public Law itself, are having to use locum lawyers in various specialist areas

which increases costs. On that basis it is difficult to estimate how much an in-house legal service would cost with any degree of certainty.

- 2.22. Nevertheless, this potential way forward will be kept under regular review and as the agreement is terminable on 6 months notice which can be served on 1 April or 1 October of each year of the agreement, the Council retains the flexibility to do this during the life of the agreement.
- 2.23. Having regard to the options considered, it is recommended that the current arrangements under the Inter Authority agreement with Harrow LBC continue and the Monitoring Officer will work with colleagues in the service areas to monitor the use of HB Public Law and will work with HB Public Law to improve the agreed key performance indicators.

3. Implications of the Recommendation

Financial implications

- 3.1.1. It is projected that the Council will spend in the region of £1.343M with HBPL in 2023/24, based on a current projection of legal work, including disbursements which includes Counsel advice. The charging rates will increase by an inflationary amount. This would mean an approximate total cost, if usage remained the same, of £1.406M in 2024/25.
- 3.1.2. 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. Charges for HRA related work is coded to the HRA and accounted for accordingly.

Legal implications

- 3.1.3. An Inter-Authority agreement has been 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.
- 3.1.4. The Monitoring Officer also has delegated authority to undertake these functions and has authorised HBPL to affix the Council's seal to any document that requires sealing.

Risk management implications

- 3.1.5. The risks of terminating the agreement and bringing the service back in-house are referred to in the report. The risk of not meeting the guaranteed hours

provision set out in the Proposal is not considered to be likely but that is in the Council's own hands.

Environmental implications

3.1.6. There are no significant environmental implications.

Equality implications

3.1.7. HBPL has set out its career development opportunities in its draft Business Plan 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. In its draft Business Plan it has targets to meet the LGA Equality Framework 'excellent' level for diverse and engaged workforce.

Procurement implications

3.1.8. 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

Survey results, financial monitoring information and soft market testing information