

STROUD DISTRICT COUNCIL
STRATEGY AND RESOURCES COMMITTEE

**AGENDA
ITEM NO**

3 OCTOBER 2019

8

Report Title	LEGAL SERVICE OPTIONS
Purpose of Report	To provide the Committee with an options appraisal of in-house and shared service delivery vehicles against a set of criteria.
Decision(s)	<p>That Strategy and Resources Committee RESOLVES:</p> <p>Subject to the approval of a detailed Business Case (including the financial case) by the Chief Executive in consultation with the Section 151 Officer and the Leader:</p> <ol style="list-style-type: none"> 1. To approve, the joining of the Stroud District Council’s legal services with Cheltenham Borough Council, Gloucester City Council and Tewkesbury Borough Council (One Legal). 2. To transfer Stroud District Council’s legal services staff to Tewkesbury Borough Council under the principles of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) on a date to be agreed by the Chief Executive. 3. To delegate Stroud District Council’s legal service functions to Tewkesbury Borough Council, as host authority, in accordance with section 101(1) of the Local Government Act 1972. 4. To delegate authority to the Chief Executive, in consultation with the Leader, to enter into the s101 Agreement, any other legal documentation and to take all necessary steps to implement the above-mentioned resolutions.
Consultation and Feedback	The in-house legal team has been consulted on the proposals. The Joint Monitoring and Liaison Group for One Legal has been consulted and is supportive of Stroud joining the partnership.

Financial Implications and Risk Assessment	<p>The recommendation made is subject to an acceptable business case and therefore final costs are not known at this stage. Although the approval of the business case is delegated, the final budget impact will be reported back to this committee after the business case has been received and agreed.</p> <p>Financial savings are not the primary reason for the recommendation and therefore it is anticipated that the cost of the new service position will be broadly in line with current budgets. There is the possibility of some variation, albeit not likely to be significant, and this will become clear in the final business case.</p> <p>Savings may be realised by preventing costs in future years through greater resilience and shared expertise within the shared service reducing the need for external spend on future Council projects.</p> <p>Andrew Cummings, Interim Director of Resources & S151 Officer Tel: 01453 754115 Email: andrew.cummings@stroud.gov.uk</p>
Legal Implications	<p>Any legal implications relative to the decision being made are set out in the body of the report. In the event the Committee accepts the recommendation, there will be a need to consider and negotiate an appropriate delegation agreement under section 101(1) of the Local Government Act 1972 to reflect the shared service arrangement.</p> <p>Patrick Arran, Head of Legal Services and Monitoring Officer, Tel: 01453 754369 Email: patrick.arran@stroud.gov.uk</p>
Report Author	<p>Patrick Arran, Head of Legal Services and Monitoring Officer, Tel: 01453 754369 Email: patrick.arran@stroud.gov.uk</p>
Options	<p>The Committee may either decide to accept the recommendation or maintain the status quo.</p>
Performance Management/Follow Up	<p>The recommendations, if approved, are that the Council will enter into a shared service agreement with One Legal subject to the approval of a detailed business case. If the business case is not acceptable a further report will be brought to the Committee. If the Council enters into the partnership performance is monitored by the Joint Liaison and Management Group on which SDC Members and Officers will be represented.</p>
Background Papers	<p>Strategy and Resources Committee Report 13th June 2019</p>
Appendices	<p>Appendix 1 – Time Recording Statistics Appendix 2 - Terms of Reference Joint Liaison and Management Group Appendix 3 - Biography Mr Michael Graham</p>

1. INTRODUCTION

On the 13th of June 2019, Strategy and Resources Committee considered a report by the interim Head of Legal Services regarding a review of Legal Services. This report was very detailed and as such, other than providing context where necessary, it is not proposed to duplicate any information set out in that report. It is recommended that members please re-read that report for background.

- 1.1 The Committee resolved to instruct the Interim Head of Legal Services to provide a further report setting out an options appraisal of in-house and shared service options.

2. EXECUTIVE SUMMARY

This report sets out an options appraisal for the future delivery vehicle for legal services based on the two options requested by the Committee. The report culminates in a recommendation for future service delivery which is that a shared service arrangement will provide the Council with resilience for the future.

- 2.1 The interim Head of Legal Services has been retained by One Legal and is seconded to Stroud for the purposes of fulfilling an interim role of Monitoring Officer for the Council and to carry out this review and any actions arising. In order to ensure that there is external oversight and assessment of the process, the Chief Executive has asked an independent person, Mr Michael Graham, to moderate the work and provide comment in this report. Mr Graham is the Head of Corporate Governance at Spelthorne Borough Council. His comments are contained at Paragraph 7 of this report. A biography for Mr Graham is set out in Appendix 3.

2. RATIONALE FOR THE REVIEW & CONTEXT

There are a number of reasons why one would carry out a review of service provision, legal services is no different to any other type of service in this respect. A service review would normally consider whether the service was fit for purpose and providing value for money. Reviews are normally carried out as a result of specific issues and in this case there are concerns over the future resilience of the service. The main objective of this review therefore is to ensure that the Council has access to resilient legal services in the medium to long term given the challenges facing it. (The objectives are set out below at Para. 4).

- 3.1 In terms of the financial aspect, the most obvious reason for a review would be to see whether costs could be reduced, either by a reduction in service provision or by driving out waste in processes. Whilst, it is important to point out that cost reduction is not one of the objectives of this review, one would certainly consider potential collateral benefits of cost saving either by effective workforce planning or economies of scale leading to a reduction of external legal spend and identification of efficiencies in working practices.
- 3.2 The assessment of the quality of a service is a subjective process assessed with questions such as; is client satisfaction tangible and measurable, is it providing the Council with timely and accurate advice; is it facilitative or restrictive and finally is it resilient in terms of anticipated or potential future issues that the Council will have to face. In the previous report, reference was made to historical issues which had perhaps impacted upon perceptions of the quality of the service provided. It is

important to note that, in the authors view, there is no cause for concern. Legal Services colleagues provide a good service to their clients and endeavour to work on a business partner basis with officers. Legal input into reports and their implications is constructive and colleagues try to become involved at an earlier stage of the matter.

- 3.3 Given the situation with local government finances, there will be a compelling need for Councils to explore more innovative and efficient methods of delivering services. As was mentioned in the previous report, local authority legal services are now expected to carry out or commission legal work that would not have even been considered ten years ago in the local authority setting.
- 3.4 However, this is a small team and the size of the team and demographic in certain disciplines is likely to lead to serious resource issues in the near future. In addition, an important consideration set out in the previous report was that an effective Legal Services function is essential to the success of any new initiatives the Council may wish to consider. As such, any options appraisal must have the medium to long term future firmly in sight.
- 3.5 Members will soon be considering the next budget round to plan for the impacts of government funding on service provision. In common with other Councils, Stroud will have to consider what options there are to manage budgets whilst still providing services. The impact of a deficit in the grant from Central Government can be mitigated by income generation. This will require legal advice in relation to commercial activity which may include advice in relation to charging and trading and the setting up of local authority companies for example. If that were a direction of travel, there will be a need for someone to advise on company law and undertake the duties of Company Secretary.
- 3.6 The Council spent £28m on goods and services in the last financial year and a certain element of this will be addressable – i.e. the potential to make savings by a more strategic approach to procurement than exists at present. Advice will be needed on reduction of third party spend which will mean a need for skills in the interpretation and drafting of contracts. With a more strategic approach to procurement and contract management, there will be a need for legal support to enable the Council to be more creative in facilitating procurement and contractual arrangements on the terms that are the most advantageous to the Council.
- 3.7 Finally, in the event of a hopefully last resort of hard choices having to be made in relation to service provision, advice will be needed in relation to what the Council is legally able to do in terms of reduction of services and how it can best avoid challenge if it decides to do so. Therefore, there will be a need for sound governance advice and knowledge of administrative law.
- 3.8 These are just some examples of the sorts of new challenges Stroud may face and the reality of the situation is that a modern local authority legal service has to grow and adapt to meet those challenges.

4. OBJECTIVES / GENERAL INFORMATION

The objectives for this options appraisal are to ensure that:

- The Council has a resilient legal service that is able to meet its needs in the medium to long term
- Quality legal advice is readily available
- Advice and interaction is consistent and facilitative
- The legal service is proactive and efficient
- External legal spend is reduced where possible

4.1 General Information

Before setting out the options appraisal in relation to an in-house or shared service model, it will be useful to set out some factors which are of general application to either model.

- 4.2 It is extremely rare for any local authority legal department to have the skills and competencies to carry out all legal work in house and this applies to both in-house and shared service. As such local authorities tend to operate a "mixed economy" for legal provision. The directly employed expertise is usually supplemented by resources commissioned either from other local authorities or private practice. The usual ratio is around 80:20 or 90:10. These arrangements are utilised to supplement capacity and expertise or where there may be conflicts of interest, investigations or other specific requirements.
- 4.3 There is very little organised or ad hoc reciprocal inter-authority collaboration amongst legal services in the Gloucestershire area and there is a paucity of networks for sharing experience. This is not unique to this area, but a lot of Councils now have arrangements whereby they are able to call on skills held by neighbouring authorities rather than retaining a person with the relevant discipline in-house. This may well be something that should be explored with a view to improving networks for colleagues.
- 4.4 If an in-house service is retained, the way forward should be to attempt to enter into arrangements for appropriate collaboration and reciprocal sharing of resources. It makes absolute sense for there to be inter-authority cooperation and collaboration in a market where:
- a) There is a shortage of traditional local government law skills and
 - b) The absence of local talent makes it extremely difficult to recruit in this geographical area.
- 4.5 Developing this theme, there is not necessarily a need for every small legal team to have a specialist contracts lawyer or a planning lawyer for example. If there was a reciprocal arrangement in place, then one or two authorities could recruit these difficult to fill posts and these posts could either be funded:
- On a direct contribution basis
 - Reciprocal service provision or
 - Pay as you go basis.
- 4.6 This way the hosting authority could a) pay a better market rate and b) have a proportion of the costs paid – perhaps even achieving a zero based budget post. This

type of arrangement worked relatively well in the South West Wales collaboration with the establishment of a regional commercial team.

4.7 Needs Assessment

The previous report set out the types of work carried out by Legal Services in Stroud. In Appendix 2, there are detailed time reports for the last four years which set out, in terms of hours spent, the departments that use the service the most / who Legal Services do the most work for. Colleagues are expected to record 1000 'chargeable hours' per annum. There are some general observations to be made which are as follows:

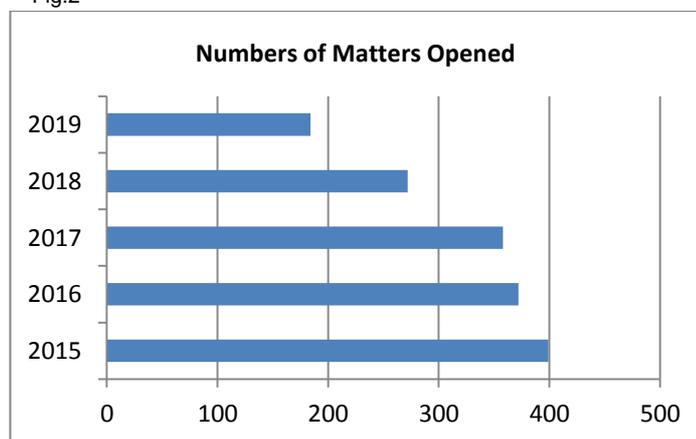
- The time recording trend, and consequently the work, has been consistent over the years. Figure 1 below demonstrates that the team has recorded an average of 7905 hours per year.
- Time spent for the main users of the service has also been consistent and is as one would expect in a District Council.
- The picture is slightly distorted by 'Legal Services' being represented as a client. This is, in reality, a miscellaneous client file which would include work such as GDPR readiness and a host of other corporate matters
- The time recorded demonstrates the diverse nature of work carried out by the team

Fig. 1

Total Time Recorded	
2016	8549.2
2017	8684.8
2018	8466.9
2019 (Extrapolated)	5919.1 - NB 2019 reduction due to less staff time recording
Average Time Recorded p.a.	7904.475

- 4.8 In terms of the number of matters opened, this has been relatively consistent for the last 4 years and is set out in figure 2. Whilst on the face of it there is a slight drop in the number of matters opened, this can be explained by a reduction in staff and debt work, such as rent arrears, (which can be great in volume) being carried out by client departments.

Fig.2



4.9 At the time of writing this report, there are 216 live files open within the department (which includes general files). Analysis of the live file list for each colleague demonstrates that everyone is working within capacity.

4.10 Costs of Legal Service

As at the end of the last financial year, the current cost of Legal Services was £435,680 with 15% (£66,031) being met from income generated by the team.

4.11 Cost of External Legal Spend

The cost of external legal advice varies from year to year and is dependent on whatever projects / legal action, the Council is involved in. Over the last four years an average of £81k per annum has been spent externally. However, this is subject to the caveat that this figure also includes items such as Court Fees, Land Registry Fees.

4.12 The figure must be treated with caution and would need to be verified with a more forensic 'deep dive' spend analysis, but it does provide a *tentative* total cost of legal services to the Council of £516,680.

4.13 Anticipated Future Pressures

In addition to the work areas set out above, the following are examples of the projects expected to require additional legal input in the short to medium term:

- Commercial Property / Council Owned Property
- Council House Building
- Canal Restoration Project / Compulsory Purchase
- Council Lottery
- Housing – Tenant behaviour, ASB
- Housing Reactive Repairs in-sourcing
- Local Plan and ancillary work
- Waste
- Private Sector Rental Market and use of statutory powers
- Governance Matters – review of Constitution
- Brimscombe Port Project

5. **OPTIONS APPRAISAL**

This section of the report will consider the options for legal service provision requested by Strategy and Resources Committee, namely:

- In house model
- Shared service delivery

5.1 The options will be measured against the following criteria:

- Improved resilience
- Skills to deliver
- Ability to meet client needs
- Future proofing
- Value for Money
- Adaptability

5.2 Current Model

The current service model for Legal Services is in-house with external support commissioned where / when needed. The vast majority of work is done in house with very little work now outsourced. This is mostly confined to instruction of Counsel where appropriate. If any external legal advice is needed it is to be commissioned by Legal Services with no direct access for client departments. If an in house service were to be retained, it is recommended that the approach to commissioning should be to consider a strategic partnership with another public sector provider to ensure that the Council has access to quality legal advice with an agreed cost arrangement. Alternatively, use of a framework of approved legal providers should be considered.

5.3 There is a small established team, a proportion of who have been with the Council for a number of years. The team is close knit and a strong team ethos is in existence. The team is well regarded by its client departments and provides a good service to the Council. The approach of the team is to be facilitative and helpful with a focus on solutions-based advice whilst ensuring that the Council is protected at all times. As mentioned above, as far as the author is concerned, any historical issues mentioned in the previous report have now been resolved.

5.4 A SWOT analysis (Strengths, Weaknesses, Opportunities & Threats) was carried out with the team which highlighted the obvious strengths the team possess but it also identified some issues which need to be addressed. The outcomes of this analysis and any countermeasures / mitigations, where relevant, will be referred to within the criteria set out below.

5.5 The uncertainty around future service provision has, understandably, had an impact on morale within the team and there is a need to settle the position regarding future service delivery at the earliest opportunity.

5.6 Shared Services

Local authorities have always had the legal power to make use of different forms of service delivery. Sharing may take place between neighbouring authorities or non-neighbouring authorities. It may take place between different types of authorities (e.g. county and district councils). Shared services may be provided via a joint in-house department or they may be jointly outsourced. Governance of shared services can take place via a joint committee between the participating authorities, or simply through agreements between the executives of the participating authorities.

5.7 The immediate rationale for local authorities which have decided to share their service provision with other local authorities is often financial. As mentioned above, this is not the reason for this review. There are potential indirect financial benefits in terms of service improvements in terms of effectiveness and efficiencies.

5.8 Councils do not need to be geographical neighbours to share services. There are examples of services being shared between district councils in different counties. However, non-neighbour initiatives are far from common and present real challenges, such as the amount of time officers spend travelling and the difficulty of sharing place-based services. In circumstances where distance management is necessary, communication will be key and officer 'down time' and lost opportunity costs through

travelling should be reduced or mitigated through the use of technology such as video conferencing.

- 5.9 For the purposes of this options appraisal, due to the geographical issues and the fact that it is a local and established service, any consideration of a shared service arrangement will be confined to the partnership between Cheltenham and Tewkesbury Borough Councils and Gloucester City Council known as One Legal. Members will please note however that a final decision to enter into a shared service arrangement will be entirely predicated on an acceptable business plan being produced which demonstrates that it can provide an equal or better service to the Council will need. It should also be noted that the other members of the shared service will have to agree to Stroud joining as this will necessitate the disaggregation of the current agreement between them.
- 5.10 It should also be noted that, if there were to be a shared service arrangement between Stroud and One Legal, there will be a continued presence of legal officers at Stroud Offices on a day to day basis, albeit not necessarily the same, or as many officers, which make up the current in-house service. It is also probable that the Monitoring Officer will remain a Stroud Officer and this statutory role may not form part of any service agreement with One Legal. The sustainable role of a Monitoring Officer will be considered during the coming months as the business case is being developed. The Monitoring Officer role includes some support for Town and Parish Council and this will be considered when assessing the best way to deliver that role. The appointment of a Monitoring Officer will require a decision by full Council at a later date.
- 5.11 Shared service arrangements are operated on a cost sharing basis, with an agreed mechanism for sharing any resulting savings or surplus income. This is normally documented in an Inter-Authority or Collaboration Agreement. Shared services may operate for the whole or part of legal services and an Authority may concurrently provide legal services even if it has entered into a shared services arrangement. The key reasons for considering a shared service arrangement commonly seen in other Councils are:
- Greater range and depth of services available at a single point, with less need for onward referral
 - Work which is currently outsourced being done by the legal team at a reduced hourly rate
 - Managing changing workload requirements more effectively due to the greater number of staff
 - Improved ability to plan work efficiently, with a wider population of staff
 - Improved ability to manage peaks and troughs in workload
 - Increased viability of employing specialists – e.g. employment, contracts lawyers, as the demand across a wider client base is likely to make it financially sound. This will reduce the cost of external services
 - Attracting and keeping the best staff, through the greater opportunity for career progression within a larger department
 - Reduced overheads – a larger department needs to fund only one law library & case management system, the per capita training cost is cheaper with volume, overall space usage is generally less (leading to reduced overhead allocations).

5.12 One Legal

The option for a shared service in the previous report considered by members at Strategy and Resources Committee was predicated on the potential to join an existing arrangement operated by Tewkesbury Borough Council called One Legal. The options appraisal criteria will be applied on the basis that One Legal is able to provide a legal service to the Council but is dependent on their ability to do so being evidenced in a detailed business case setting out the considerations for how the service will operate.

- 5.13 One Legal is a shared service between Cheltenham Borough, Gloucester City and Tewkesbury Borough Councils with Tewkesbury acting as the Host Authority for 'pay and rations' purposes. It was launched in 2009 and was originally set up as a shared service between Cheltenham Borough and Tewkesbury Borough Councils, with Gloucester City joining in April 2015. It is a bespoke service which styles itself as incorporating public sector expertise with a strong business ethos. One Legal has a pool of expertise and skills base, which is able to successfully support the varied and complex legal work arising from the councils' challenging business agendas. It operates on a structure that is fee earning focused with minimal overheads, sustainable to deal with increases in workload and seeks to harmonise terms and conditions for all staff.
- 5.14 Cheltenham, Gloucester and Tewkesbury have entered into a delegation arrangement under s101 of the Local Government Act 1972 (and other enabling legislation) which means that all legal work is provided by One Legal. The service is jointly governed by the Councils through a Joint Monitoring and Liaison Group ('JMLG'). The JMLG oversees the performance of the shared service and receives reports from the Council Solicitor and other senior officers of the Councils as necessary to properly challenge and monitor the performance of One Legal on behalf of the Councils. The terms of reference are attached at Appendix 2.
- 5.15 Upon entering into the arrangement the three Councils agreed a 10 year agreement in April 2015. Upon Stroud entering the agreement a new 10 year agreement would begin from that point. The existing agreement contained an option for partners to leave at the 5 year point with twelve months written notice. Neither partner took up that option in a recent service review.
- 5.16 One Legal say that their focus is "*to provide an excellent legal service to all clients across our public sector client base*" and that they do this "*by blending commercial values with public sector requirements to deliver a cost effective, progressive service*". In addition to the full range of local government legal work they are able to provide specialist support in the fields of litigation, company law, property, procurement and employment.

6. ASSESSMENT CRITERIA

Improved resilience - The Council requires a legal service which is able to deal with day to day issues, but also to be able to cope with the unexpected and be responsive to requirements which may arise in the future. In short, it needs consistent access to key legal staff and cover when they are not available.

6.1 In-house

The team currently deals with a wide variety of issues which are referred to legal services. Whilst it is not practicable for colleagues in a small team to specialise, most have an area in which they 'major' but also carry out other diverse work as and when needed. The strength of the team ethos should be specifically mentioned; colleagues in Legal Services readily step in to assist each other when required even if this means that they are dealing with a legal issue that may not be familiar to them.

6.1.1 At the time of writing this report, there are some minor limitations in service provision but this will be exacerbated by the demographic within the team and the likelihood that the Council will need advice in new areas of law which the team is not currently equipped to deal with. There is likely to be an issue in the areas of Commercial Property and Contracts in the near future. There will also be an immediate need to provide cover in litigation due to the departure of a senior solicitor within the team. Whilst it can only be speculative, the impact of Brexit is unknown at present. The legal position appears to be broadly straightforward, but it is unclear what specific issues and legal considerations will arise for the Council when the UK leaves the EU.

6.1.2 Whilst strictly being a succession planning consideration, there is also lack of resilience at more junior grades within the team. The impact of this is that the service has not been 'home growing' staff in recent times and solicitors are dealing with work which is below their pay grade / level of competence which is not cost effective or an appropriate use of resources. This lack of recent staff development is a result of uncertainty around the future of the team after the departure of the last permanent Head of Service. Another issue, as is the case in most Council legal departments, is that work is carried out by legal colleagues which is not legal work. Some examples of this in Stroud are Notice of Possession Proceedings / homelessness reviews, footpath diversions and Asset of Community Value registrations.

6.1.3 To be able to resolve these issues, there would have to be a re-design of the team with re-designation of roles and appropriate recruitment.

6.1.4 Shared Service

The advantages a shared service has over a small team is that; it will have access to a larger resource pool; is able to retain subject matter specialists and can delegate work to more junior staff. This means that it is better placed to increase resilience and flexibility and is more sustainable.

6.1.5 Compared to an in-house option, there will also be better opportunities in a shared service environment for colleagues working at Stroud to enhance their development by regular access to work at the appropriate level.

6.2 Skills to deliver - The Council requires the ready and accessible provision of high quality and professional legal services through a skilled generic and specialist legal workforce.

6.2.1 In-house

There are some knowledge gaps in specialist areas such as more complex contract and procurement, but as can be seen from the time recording analysis, with most areas of work there is not a current need for full time cover. There is of course something of a paradoxical situation here for a small team because it cannot justify holding expertise in house 'just in case' but will be expected to service that work when it arises. It is usual for colleagues in an in-house legal team to be expected to diversify; a lawyer is trained to possess a set of transferrable skills that ought to be applicable to a given legal situation, but that has to be within reason of course.

6.2.2 In the event that the skills or capacity are not available in house, the normal approach would be to take external legal advice on issues as they arise. However, this can become expensive if it becomes a regular occurrence or where a Council is engaged in a number of projects.

6.2.3 In terms of future need, any horizon scanning at this point in time involves an element of speculation. It is not unreasonable to suggest that financial necessity will mean that the Council, like others, will need to be more innovative in its approach, which will require timely legal advice on areas of law for which it has no expertise.

6.2.4 Shared Service

A shared service has the workload and ability to retain subject matter specialists and in turn create centres of excellence which is not possible for a small in-house team like Stroud. For example, a specialist employment lawyer could be retained on the basis they will be servicing a number of client councils. There is also the benefit of being able to take advantage of a pooled resource of knowledge and resource in the event of sudden upsurge in demand or to tackle a particular issue which arises.

6.2.5 Whilst subject to a business case, One Legal appear to have expertise on hand to provide the Council with advice in relation to the issues actually and potentially facing it.

6.3 Meeting client needs - This criterion enquires whether client departments have a service that meets their needs to ensure their requirements are met appropriately and efficiently.

6.3.1 In-House

Subject to what is said above, there is sufficient capacity and capability within the team to meet the needs of client departments on a day to day basis dealing with routine matters. It is important that the Legal Services function works closely with managers to identify work trends and potential pinch points at an early stage. This will enable appropriate management of client expectations.

6.3.2 Relations with client departments is good, but colleagues will need to work on building networks to continue to improve relationships, manage expectations and create a

collegiate approach. Whilst any previous issues have been substantially resolved, adopting and adhering to a service level description may help client colleagues to understand what service is available. Part of any service level description would also be to set out the role of legal services in terms of what it does, but perhaps equally importantly to set out what it does not do.

6.3.3 Shared Service

A clear understanding of the service to be provided would be especially important with a shared service arrangement. There would need to be robust processes and procedures in place to ensure good communication and service delivery. Most organisations utilise an electronic case management system in delivering their day to day work. Used to its optimum, this can provide valuable management information and demonstrate the level and amount of work being carried out for particular clients. The more advanced systems offer a client self serve facility so that clients can track the progress of a case without contacting a fee earner.

6.3.4 It would also be usual in a collaborative arrangement to have some specific measurable core service standards against which the Council could monitor performance. One Legal's core service standards are: -

- Timely and responsive advice and assistance
- Pro-active and pragmatic approach to problem solving
- Focus on client needs and requirements
- Helpful and supportive approach to client officers and project teams
- Provision of regular updates on case status

6.3.5 One of the concerns often raised about shared services is how conflicts of interest are dealt with. One Legal has a conflict protocol to manage any legal conflict which may arise. In most cases this will involve appropriate 'ethical walls' within One Legal. Where it is necessary to instruct external lawyers One Legal will facilitate that process.

6.4 Future proofed - this element is very closely linked to resilience but focuses on the issue of succession planning for future service delivery.

6.4.1 In-House

Legal Services is a small team and there are never going to be the efficiencies of scale that would be achieved by a larger organisation. The team is already focussed on providing an excellent service to the Council. However, if the decision is to retain the service in-house, there will need to be strategic succession planning to give the service direction and to enable colleagues to achieve their full potential.

6.4.2 The SWOT analysis revealed that the team believe that the temporary nature of the leadership process has weakened structures within team. It is their view, which is not unreasonable, that to future proof the team, the structure needs to be reviewed with appropriate recruitment to fill existing and anticipated gaps. It was also suggested that the lack of an up-to-date service plan hinders the ability of the service to define its role in the delivery of corporate priorities. Likewise, the absence of clear objectives mean that individual colleagues cannot easily identify the part they will play in helping the Council realise its objectives.

- 6.4.3 A workforce plan will need to be produced identifying the main areas of work for the team which will anticipate future work challenges and a skills analysis will help identify resourcing priorities and work allocation within the team. It will also set out what will be necessary to future proof an in-house team. To be fair to the team, they currently have no control over strategic service planning and this is an observation of the current situation, not a criticism.
- 6.4.4. In terms of 'quick wins', there is currently a vacancy in the structure for a trainee solicitor and whatever the decision, it makes sense to recruit to that post to start to 'home grow' talent. In addition, the role and function of business support needs to be assessed and consideration given to perhaps re-purposing colleagues, with appropriate training and support, to carry out a quasi / fee-earning role.
- 6.4.5 The author has been informed anecdotally that the Council has had challenges recruiting staff in some areas at a mid-ranking level. There were, apparently, no external applications for the Senior Solicitor / Deputy Monitoring Officer role when it was advertised in 2014 and 2017 and very few applications for solicitor posts in 2014. The spot salary pay arrangements in Stroud present a real challenge in attracting candidates

6.4.6 Shared Service

It is anticipated that One Legal will have a clear service plan which would be evidenced in the business case that will be prepared should the decision be made to proceed with a shared service. One would assume that their business model demands that strategic service and workforce planning are carried out and regularly reviewed. On the basis that the shared service arrangement has now been in existence, and endured, for some 10 years it can be assumed that it has appropriately anticipated and managed demand in conjunction with its clients appropriately.

6.5 Value for Money - The arrangement needs to be demand-driven, informed by wider market rates and level of service, and based on clear client specifications and monitoring of performance against cost.

6.5.1 In-house / Shared Service

There is no doubt that a properly resourced legal team either in-house or as part of a shared service will represent better value for money than externally commissioned legal advice.

6.5.2 Experience demonstrates that the costs of an in-house team and joining One Legal would probably be comparable assuming a like for like service, but again this would be subject to a business case.

6.5.3 As of the last financial year, the current cost of the Legal Services team was £435,680 with 15% (£66,031) being met from income generated by the team. On the basis that the team time records, there is a tangible means of assessing value for money. If for the purposes of this report it is assumed that 75% of the time recorded is chargeable it is possible to demonstrate the cost of a private legal firm providing this level of work. It is normal for a firm of solicitors to offer a reduced rate to councils. A standard public sector charging rate of £150 per hour is representative. (In some legal disciplines private sector costs can be £300 per hour and upwards). If an external firm carried out

5,929 hours chargeable time at £150, this would equate to £889,350. It is appreciated that this is not a truly scientific approach, but it serves to illustrate that retained provision is far more cost effective than a commissioned approach.

- 6.5.4 As mentioned above, there is room for improvement by ensuring that work is carried out at the appropriate level. Better use could be made of the case management system with workflows and precedents being developed. This would be a way of streamlining legal work which is carried out using a process approach thus saving time and effort.
- 6.5.5 The optimum position for any legal team would be for it to be cost neutral to the Council, but whilst the in-house team performs well in terms of income generation, lack of available resource mean that it is a real challenge to develop this area. Clearly, the first priority has to be to provide a service to the client Council before being able to consider offering services to other public sector clients.
- 6.5.6 The current business model for One Legal is that it does not actively pursue increased fee income generation, though it does act for a number of public sector clients and has been in a position to pay a share of surplus back to its existing member councils.
- 6.5.7 In any event, it would be useful for there to be a review of fees charged by Legal Services with a view to an appropriate increase in fees from existing areas.
- 6.5.8 There is probably the potential for either option to increase the work carried out for other public sector bodies such as local authorities, arms-length management organisations, charities and not-for-profit organizations, blue light services, housing associations, and schools (academy, free and maintained). Although servicing existing clients has to be the first priority.
- 6.6 **Adaptability** - The service needs to be able to flex to meet changing demands and circumstances of clients in a timely and cost-effective fashion. Again, this criterion is closely linked to resilience, future proofing and skills to deliver, but the focus of this criterion is the ability of the service to respond.

6.6.1 In-house / Shared Service

A larger service would be better placed to respond quickly to a change in the type of demand. The in-house option would need to keep a close track on demand, appropriately manage the demand and ensure appropriately skilled resource is available.

- 6.6.2 On the basis that that the current process is to consider the options for service delivery, consideration has not been given to how the service could become more efficient. However, these are the type of questions which are applicable to either an in-house or shared service arrangement and which would assist with service adaptability:
- How can the service be redesigned to improve customer outcomes and reduce costs?
 - How can we prevent or reduce the need for the service?
 - What new innovations or use of digital technology need to be introduced?
 - How can we reduce costs, increase effectiveness, eliminate waste?
 - Which alternative models of delivery exist; which would best deliver the outcomes?

- 6.6.3 There are smarter ways of working to provide an effective and efficient legal service. The key challenge is to remain pro-active, commercial in approach and effective in meeting the Council's needs to a level that does not 'gold-plate' requirements.

7. COMMENTS OF INDEPENDENT REVIEWER –

Thank you for providing the report in draft so that I may add my comments. It may be helpful for councillors to know that I met with the legal team on 30 August 2019 and had a very useful discussion with them about the current situation. This certainly helped me place this report in context. In addition I have read the previous report for your committee in June 2019 and also watched the webcast of that meeting and noted councillors' comments. I have also had the opportunity of a number of conversations with Kathy O'Leary and Patrick Arran which have provided very helpful background to the issues raised within this report.

- 7.1 The report which you have before you is a thorough synopsis of not only the issues facing Stroud DC but also it reflects the issues which are visible in many other councils. Having experience in setting up of a shared service in the past I do endorse that this report has thoroughly covered the issues which one would expect to see covered. I also agree with the conclusion to prepare a detailed business case for the proposal of establishing a shared service with One Legal.
- 7.2 I have the following observations to make on the report which may be helpful in addition:
- 7.3 Paragraph 3.3 talks about the innovation and legal work which would not have been considered relevant in a district council legal team some 10 years ago. I think this is correct. Certainly some small district councils have radically changed the ways in which they work and, for instance, in my own council we have dealt with very high-value commercial property acquisitions and had to develop a function of landlord estate management on an extremely high value commercial property estate. We have also undertaken far more regeneration work than ever before and this is not only on the normal basis of ensuring the environmental, economic and social well-being of the area but it has also been driven by the need for income generation as well. On the back of this, we have had to develop very specialised skills in high-value procurement and construction law. In addition, the council has set up a number of commercial ventures and in addition to a growing need for commercial law we have also established companies and had to develop experience in company secretarial work. I would therefore agree with the comment in paragraph 3.6 that strong performance in relation to procurement is key to a district legal team in this new era of income generation.
- 7.4 I agree with the comments made in paragraph 4.2 about the mixed model of working. I would recommend that this is also explored in the business case to understand the extent to which One Legal also has to utilise specialists outside their own team and for what purposes.
- 7.5 I agree with the comments made in paragraph 4.3 about the ability of the current in-house legal team to network with other councils in the county. Given that there appear to be no strong networks between district councils other than the two established shared services, this will be a relevant factor if the council were to consider retaining an in-house legal team. Most small district councils find it necessary to work closely

with their counterparts in other authorities within the county. If this is not possible then it becomes an issue as to where the in-house team can build knowledge from the experience of others in similar circumstances.

- 7.6 I agree with the comments made in paragraph 4.4 about recruitment. However I would also add that this appears to be a sector wide issue and not one which is unique to your county. A report last year undertaken by Local Government Lawyer website found that recruitment of lawyers was a concern to Monitoring Officers across the whole country.
- 7.7 I was interested to read the comments in relation to time recording and also review the statistics in the appendices. I agree that further work needs to be done to look into the current balance of work and ensuring the data is accurate and representative. At first sight there do not appear to be fundamental problems within that data and I would also agree that the level of income achieved by the team and reported at paragraph 4.10 is a good basis on which to build. This should be reviewed as part and parcel of the business case with One Legal to see what assumptions they make as regards time recording and income generation.
- 7.8 I note the comments on the cost of the service in relation to paragraph 4.12. From what I've seen so far, I would say that the council looks like it is achieving an element of good value with the in-house team. That does not undermine the comments which are made within the report about the need to look to the future, however members will wish to see how this figure may change once the business case with One Legal has been developed.
- 7.9 I agree with the recommendations about the establishment of a framework for providing outside legal advice where it is required. The essence of these frameworks is that they work best when there is the combined buying power of a consortium. Given what has been said about the weak networks between local authorities in Gloucestershire, it may be that the combination of authorities in One Legal is a good place to start to achieve the combined purchasing power to establish a framework and get the advantage of those better hourly rates when they are required.
- 7.10 I agree with the comments made in paragraph 5.7 and endorse the need for both sides in this shared partnership to be clear that they have the same aims and ambitions in working with each other.
- 7.11 I agree with the comments in paragraph 5.10 in that it is sensible to keep some officers at Stroud DC offices. This will certainly help reduce travelling time which would otherwise be a waste. It will provide reassurance for officers in other services that legal colleagues are on hand to help them when required. I also agree that it will be a sensible arrangement to keep the Monitoring Officer apart from the shared service partnership, certainly to begin with. Whether or not that is a feature which continues is something which can be reviewed in the future. However, I think it will give councillors more satisfaction to know that they have got a legally qualified Monitoring Officer on hand who has no potential conflicts with the One Legal service.
- 7.12 I note the comments in paragraph 5.11 about overheads. I agree that there is some scope for reduction in overheads but I don't think that councillors should place too much emphasis on this as from my experience these tend to be marginal. I would say that in addition to the benefits listed in that paragraph there is an additional benefit

which should not be overlooked which is the ability of a shared service to provide a stronger focus on best practice processes and building knowledge management with a strong case management system. For instance, if four councils join together in order to do, for example, procurement work, they can't all possibly operate four different ways of doing things on the basis that, "that's the way it is done around here". There is a great opportunity to focus in on what makes an efficient and effective process which then benefits all the participating councils.

7.13 I agree with the conclusions of this report. As regards the assumptions which are outlined in part six of the report I agree that these are all relevant however I would note that these are matters which must be tested to members satisfaction in the business plan so that there is reassurance that the shared service is one which can meet the needs of the council for the future.

7.14 In relation to the analysis in part six of the report I would also make the following comments and hope that these points are helpful for members.

- At paragraph 6.3.2 I agree that a service level description is a good approach. This serves the dual purpose of starting to flesh out the specification of what services will need and is the basis of the business case as it begins to be developed.
- At paragraph 6.4.2 having met the team, their comments on past leadership, service planning and succession planning resonate with me. I think that these are valid concerns which have been highlighted and members should satisfy themselves that they will be addressed within the business case for One Legal.
- At paragraph 6.4.5 salaries is a big issue in our business. I would say that this is not just a concern for Stroud DC but I would also highlight that other councils are finding it difficult to be competitive. Members should reassure themselves that One Legal have an effective strategy to deal with this.
- At paragraph 6.5.3 I agree with the Head of Legal's analysis regarding the use of external lawyers. I would also add that they take longer and charge more because they can't quickly navigate the organisation and don't have the relevant knowledge to be completely efficient and effective so they are likely to take more time as well as charge more.

7.15 I hope these comments have been helpful for councillors and I certainly wish the council well as it considers the business case for a shared service. I would be happy to help the council again in any way that members feel helpful.

8. CONCLUSION

Applying the analysis carried out in line with the criteria outlined above against the objectives, demonstrates that there are potential and actual limitations with an in-house provision. These issues can be addressed with appropriate planning and investment, but even then, this would be unlikely to provide the Council with the breadth of experience needed.

8.1 In order to provide a quick overview of the position, the following table has been completed using the following scoring mechanism. In doing so, it is acknowledged that

this is a subjective application of objective criteria an art, not a science, illustrates the point.

- 0 – Does not meet criteria
- 1 – Partially meets criteria
- 2 – Meets criteria
- 3 – Exceeds criteria

Criteria	In House	Shared Service
Improved resilience	2	3
Skills to deliver	2	3
Meeting client needs	3	3
Future proofed.	1	2
Value for Money	3	3
Adaptability.	1	3
Totals	12	17

- 8.2 The outcome of the options appraisal is that a shared service would be best placed to meet the objectives.

**Appendix One – Percentage of Time Spent by Client
2016 - Time by Client % Highest to Lowest**

Client	Time	%
Legal Services	1731.9	20.26%
Development Control	1445.9	16.91%
Asset Management - General Fund	1248.5	14.60%
Tenancy Management	997.5	11.67%
Right to Buy	372.5	4.36%
Environmental Health	344.7	4.03%
Tenant Services Assets	343.5	4.02%
Civic / Committees	248.4	2.91%
Miscellaneous	244.9	2.86%
Public Spaces	240.4	2.81%
Planning Strategy	204.2	2.39%
Elections	151.1	1.77%
Human Resources	144.1	1.69%
Democratic Services	130.8	1.53%
Monitoring Officer	121.9	1.43%
Community & Facilities	91	1.06%
HRA New Housing	89.1	1.04%
Cultural Services/Waste Management	69.5	0.81%
Council Tax	61.3	0.72%
Finance	57.4	0.67%
Canal Project	54.4	0.64%
Planning Enforcement	42.2	0.49%
Housing Strategy	29.1	0.34%
Housing Benefits	18.2	0.21%
Sheltered Housing	15.5	0.18%
Modernisation & ICT	12.9	0.15%
Building Control	9.2	0.11%
Land Charges	7.5	0.09%
Facilities Management	6.8	0.08%
Recovery/Revenue & Benefits	5.1	0.06%
Asset Management - HRA Existing	4.2	0.05%
Business Rates	3.5	0.04%
Marketing	1.3	0.02%
Performance & Improvement	0.7	0.01%
Grand Total	8549.2	100.00%

2017 Time by Client %Highest to Lowest

Client	Time	%
Legal services	1804.5	20.78%
Asset Management General Fund	1540.1	17.73%
Development Control	1077.3	12.40%
Right to Buy	601.7	6.92%
Tenancy Management	554.6	6.39%
Civic / Committees	552.3	6.36%
Environmental Health	541.6	6.24%
Human Resources	294	3.39%
HRA existing assets	216.9	2.50%
Planning Strategy	168.3	1.94%
Public Spaces	159	1.83%
Monitoring Officer	141.4	1.63%
Democratic Services	134.2	1.55%
HRA New Housing	107.5	1.24%
Corporate Action	106.4	1.23%
Housing Benefits	77.6	0.89%
Miscellaneous	77.4	0.89%
Tenant Services Assets	71.5	0.82%
Planning Enforcement	67.4	0.78%
Finance	65.3	0.75%
Community and Facilities	61.6	0.71%
Canal Project	60.6	0.70%
Council Tax	52.8	0.61%
Cultural Services / Waste	44.3	0.51%
Housing Strategy	31.1	0.36%
Elections	20.2	0.23%
Modernisation & ICT	18.8	0.22%
Recovery/ Revs & Bens	16.8	0.19%
Marketing	9	0.10%
Land charges	5.9	0.07%
Business Rates	2.9	0.03%
Sheltered housing	1.8	0.02%
Grand Total	8684.8	100.00%

2018 - Time by Client % Highest to Lowest

Client	Time	%
Legal Services	1952.3	23.06%
Development Control	1046.3	12.36%
Asset Management - General Fund	979.9	11.57%
Right to Buy	648.5	7.66%
Civic / Committees	599.1	7.08%
Tenancy Management	576.1	6.80%
Environmental Health	397.5	4.69%
Asset Management - HRA Existing Units	396.2	4.68%
Corporate Action	250.3	2.96%
Public Spaces	221.8	2.62%
Monitoring Officer	189.5	2.24%
Tenant Services Assets	166.1	1.96%
Community & Facilities	146	1.72%
HRA New Housing	122.2	1.44%
Miscellaneous	95.4	1.13%
Human Resources	83.3	0.98%
Planning Strategy	82	0.97%
Canal Project	81.1	0.96%
Finance	67.5	0.80%
Planning Enforcement	67.4	0.80%
Democratic Services	62.4	0.74%
Council Tax	44.8	0.53%
Elections	43.3	0.51%
Housing Benefits	40.1	0.47%
Building Control	37.5	0.44%
Modernisation & ICT	28.2	0.33%
Housing Strategy	18.5	0.22%
Cultural Services & Waste	17.7	0.21%
Revs & Bens	2.9	0.03%
Sheltered Housing	1.8	0.02%
Marketing	0.6	0.01%
Land Charges	0.5	0.01%
Grand Total	8466.8	100.00%

2019 - Time by Client % Highest to Lowest

NB: Time Extrapolated to end of year based on monthly average would be 5919

Client	Time	%
Development Control	681.7	19.77%
Legal Services	619.3	17.96%
Asset Management - General Fund	462	13.40%
Tenancy Management	334.1	9.69%
Environmental Health	264.9	7.68%
Monitoring Officer	200.6	5.82%
Right to Buy	183.4	5.32%
Public Spaces	86.5	2.51%
Asset Management - HRA Existing Units	84.6	2.45%
Canal Project	77.1	2.24%
Council Tax	75.4	2.19%
Asset Management - HRA New Housing	60.9	1.77%
Elections	44.3	1.28%
Corporate Action	35.4	1.03%
Planning Strategy	30.4	0.88%
Housing Strategy	27.5	0.80%
Finance	27.5	0.80%
Community & Facilities	23.6	0.68%
Miscellaneous	20.4	0.59%
Housing Benefits	18.8	0.55%
Building Control	13.1	0.38%
Civic / Committees	12.6	0.37%
Human Resources	12.5	0.36%
Modernisation & ICT	11.2	0.32%
Tenant Services Assets	10.5	0.30%
Cultural Services & Waste	8.2	0.24%
Planning Enforcement	6.1	0.18%
Marketing	5.4	0.16%
Revs & Bens	3.6	0.10%
Land Charges	2.8	0.08%
Democratic Services	2.1	0.06%
Sheltered Housing	1.1	0.03%
Grand Total	3447.6	100.00%

Appendix 2 Joint Liaison and Management Group Terms of Reference
JOINT MONITORING AND LIAISON GROUP

1. PURPOSE

To oversee the performance and development of the Shared Legal Service on behalf of Gloucester City Council, Cheltenham Borough Council and Tewkesbury Borough Council (the 'Councils').

2. MEMBERSHIP AND FREQUENCY OF MEETINGS

- (1) The Joint Monitoring and Liaison Group will consist of:-
 - 2 Members from Gloucester City Council
 - 2 Members from Cheltenham Borough Council
 - 2 Members from Tewkesbury Borough Council
 - 1 Officer from Gloucester City Council
 - 1 Officer from Cheltenham Borough Council
 - 1 Officer from Tewkesbury Borough Council
- (2) The Joint Monitoring and Liaison Group will receive reports from the Council Solicitor and the Lead Lawyers and other senior officers of the Councils as necessary to properly fulfil its overall purpose.
- (3) The quorum of the Joint Monitoring and Liaison Group will be 4 with at least 1 Member from each Council and 1 Officer from any one of the Council in attendance.
- (4) The Chairman of the Joint Monitoring and Liaison Group will be a Member of Gloucester City Council or Cheltenham Borough Council.
- (5) The Vice-Chairman of the Joint Monitoring and Liaison Group will be a Member of Tewkesbury Borough Council.
- (6) The Joint Monitoring and Liaison Group may invite any Members or persons to attend its meetings but such persons will not be entitled to vote.
- (7) The Joint Monitoring and Liaison Group shall meet at least quarterly.
- (8) The following substitution rules shall apply:-
 - The number of substitutions shall be equal to the number of absentees from each Council and/or Political Group;
 - Substitutes will have all the powers of Joint Monitoring and Liaison Group members;
 - The Leader will notify the Council Solicitor 1 hour in advance of the meeting;

- In respect of an officer substitution the Chief Executive of the relevant Authority will provide the notification;
- Substitutions will be announced at the beginning of the meeting;
- The Member of the Joint Monitoring and Liaison Group for whom substitution has been made will not be able to vote if attending the meeting.

3. TERMS OF REFERENCE

- (1) To review and monitor the performance of the Shared Legal Service and to make recommendations for service improvements.
- (2) To monitor the delivery of the Shared Legal Service in accordance with the s101 Agency Agreement.
- (3) To determine any disputes or differences that arise between the Councils in accordance with the s101 Agency Agreement.
- (4) To consider and make recommendations to Tewkesbury in respect of any termination of, or appointment to, the role of Council Solicitor.
- (5) To monitor on a quarterly basis the 5 year Financial Plan set out in the s101 Agency Agreement.
- (6) To consider at the expiration of the Financial Plan a new Financial Plan for the remainder of the Shared Legal Service arrangement and to make recommendations to the respective Councils accordingly.
- (7) To approve and monitor Service Standards and Client reporting protocols and to propose improvements as appropriate.
- (8) To receive reports on improvements or changes to service delivery and to recommend for approval major changes to the service delivery, to the respective Councils as necessary.
- (9) To receive reports on cases where conflicts between the interests of the Councils have arisen or are likely to arise.
- (10) To receive reports on any potential expansion of the Shared Legal Service including increased shared working with other Councils or other public bodies and to make recommendations to the respective Councils accordingly.

Appendix Three Biography Michael Graham

Michael Graham is a solicitor and holds an MBA from Henley Business School. He is currently Head of Corporate Governance at Spelthorne Borough Council. He was previously Head of Legal Services at Reigate and Banstead Borough Council and led both councils in a shared legal service. He has over 25 years' experience as a solicitor in local government having also worked at Cleveland County Council, Bury Metropolitan Borough Council and Surrey County Council. He has wide experience of local government across all its functions.

Michael has taken a leading role in the development of new commercial services at both Spelthorne and Reigate and Banstead Councils.

At Spelthorne Borough Council he was instrumental in the new governance arrangements required as the Council invested in commercial property portfolio worth over £1bn. He is Company Secretary of the wholly owned property company Knowle Green Estates Ltd.

At Reigate and Banstead Borough Council he helped set up three ventures as part of the council's commercial approach to develop new income streams: Greensand Holdings Ltd.- a property trading company; Horley Business Park LLP - a joint venture for the development of a new business park adjacent to Gatwick Airport and Pathways for Care Ltd - an innovative healthcare business.

Michael has also been asked to assist other councils with complex governance issues. In 2015 he was invited by Woking Borough Council to be part of the Independent Sheerwater Review Panel which considered the Council's handling of a controversial regeneration project and subsequently made a range of recommendations about project governance and community engagement which were accepted and implemented by the Council.