



**Reigate & Banstead**  
BOROUGH COUNCIL  
Banstead | Horley | Redhill | Reigate

<b>REPORT OF:</b>	HEAD OF LEGAL SERVICES
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<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	16 July 2015
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR V.W. BROAD

<b>KEY DECISION REQUIRED:</b>	NO
<b>WARD (S) AFFECTED:</b>	ALL

<b>SUBJECT:</b>	<b>DEVELOPMENT OF COMMERCIAL SERVICES</b>
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**RECOMMENDATIONS:**

- (i) To note the anticipated benefits of wider partnership projects for Building Control, Environmental Health, Revenues and Benefits and Legal Services;
- (ii) To endorse in principle the Council's commitment to a Shared Legal Services partnership with other Surrey districts;
- (iii) To endorse in principle the Council's commitment to a Shared Building Control partnership with the other East Surrey district councils;
- (iv) To endorse in principle the Council's commitment to the development of a commercial trading model in Environmental Health Services;
- (v) To endorse in principle the Council's commitment to the development of a traded service in Revenues and Benefits;
- (vi) To delegate authority to the Chief Executive to progress the commercial and partnership proposals to a more detailed business case stage; and
- (vii) To note that full business cases will be provided to the Executive at a future date when further details are available.

**REASONS FOR RECOMMENDATIONS:**

The Council's approach to working in partnership continues to make a contribution to the wellbeing of our residents and the Council's financial stability. The Council's last policy position, noted in June 2014, was to explore a Legal Services Partnership with Spelthorne Borough Council and a Building Control partnership with Tandridge DC. This report outlines an approach to explore the extension of those partnership proposals. In Legal Services the council will offer a service to other Surrey district councils as part of an approach to improve quality and resilience for legal services and at the same time start to generate income from providing services to other public sector bodies. In Building Control the partnership proposal has extended to include the other East Surrey councils and work has been commissioned to bring forward a detailed business case. In

Environmental Health the service is developing methods of working with businesses and developing new services which will generate income. These proposals are at an early stage of development. In Revenues and Benefits the end of the potential partnership with a commercial partner has led to the reconsideration of options for the extension of the service to other local authorities. The service will now develop specialist services which can be sold to other local authorities.

**EXECUTIVE SUMMARY:**

The Council is committed to providing quality services to residents and businesses within the borough. However, in line with the rest of the local government sector, Reigate and Banstead BC will be receiving declining levels of Government grant to support these services.

These new service proposals fit with the Council's corporate plan to develop a more commercial approach. These individual initiatives will develop our partnerships with other Surrey districts and at the same time, develop new markets and sources of income. The main focus is to develop new ways of generating income whilst improving the quality and resilience of the service for the Council.

**Executive has authority to approve the above recommendations.**

**STATUTORY POWERS**

1. Partnership working has been promoted by successive governments over the last 20 years. Legislation increasingly allows the Council to work in partnership with other organisations, stakeholders and residents in the delivery of services.
2. There is a legislative framework that allows public bodies to work in partnership, including the establishment of arms length organisations and companies.
3. The wide power of general competence for local authorities in the Localism Act 2011 provides sufficient powers for the Council to consider the partnerships proposed in this report. In addition, the reforms in the Legal Services Act 2007 allow the Council to establish a traded legal services business.

**PARTNERSHIP CONTEXT**

4. Partnership working can include sharing expertise and skills between organisations, seconding or sharing staff, working through informal or formal joint bodies, forming local authority trading companies and establishing joint venture vehicles such as Limited Liability Partnerships (LLPs). The precise legal form of any partnership follows the strategic objectives of the parties and the proposed operating model.
5. Partnership working is increasingly complex. Local experience and nationwide examples have shown that for partnerships to be successful, it is vital that each partner organisation has a similar vision and shared understanding for joint working. Likewise, whilst each organisation may have different objectives they wish to achieve from collaborative working, a partnership will only be successful where these objectives are compatible.

## **REIGATE AND BANSTEAD PRIORITIES FOR PARTNERSHIP WORKING**

6. The 2015 Corporate Plan sets out the Council's priority to provide quality services to residents and businesses within the borough. It also sets out an approach for responding to the financial challenges from reduced revenue support grant. This plan includes increasing income from fees and charges, a robust property strategy and controlling costs in services through efficiencies and by seeking partnership opportunities where these continue to be appropriate to the Council's strategic objectives.

## **PROPOSED PARTNERSHIP FOR BUILDING CONTROL**

7. In June 2014, the proposal before Executive was to develop a partnership with Tandridge DC for Building Control.
8. By way of reminder, the Council's Building Control Service has statutory functions for building regulation in the borough. The service exists in a traded environment whereby the costs of the service are recharged to the users. The Council is not entitled to make a profit from the service as it is supposed to operate at break-even level. The work which it does is also subject to competition from private practice surveyors or "approved inspectors". The competition with private practice means that there is strong competition for staffing resources and often the local authorities are losing out to local practices competing directly against us. Whilst this happens the Council also retains statutory functions for dangerous structures which must still be provided and these functions rely upon the skills of experienced building control surveyors.
9. Given the difficulties in recruitment and retention of staff and the fact that the service was not been able to break-even for a number of years, the proposal was that the service moves to a merged arrangement with neighbouring Tandridge District Council.
10. Whilst this proposal was in development the other East Surrey councils expressed concerns about the resilience of their own Building Control services. As a result the councils decided to investigate the possibility of working together in a wider partnership to achieve greater resilience and faster realisation of the expected benefits of partnership working. The councils have commissioned consultancy help to develop the business case. It is expected that this work will be complete in the Autumn of 2015.
11. The likely model is that Tandridge DC will operate the service in-house on behalf of all four councils with a shared manager overseeing the service. This is likely to be a simple "lead council" partnership rather than an outsourcing or public sector spin out.
12. The expected benefits of this partnership are considered as:
  - Better quality of service for residents and the building trade in each council area
  - Better resilience of each service
  - Financial savings

- Opportunities for increased income
13. Considerable detail remains to be worked out and this process has started. At this point an in principle decision is sought from Executive to approve this work to carry on in the direction outlined above and note the change from the original strategy of a two council partnership.

#### PROPOSED PARTNERSHIP FOR LEGAL SERVICES

14. The current arrangement for joint working with Spelthorne BC has been in place since December 2013 (for a shared Head of Service) and since July 2014 for a wider shared service. Since this time progress has been made as follows:
- Implementation of a centralised case management system to provide modern ways of working
  - Restructure of the teams to implement a suitable structure and up to date job profiles
  - Introduction of robust performance management systems
  - Movement of work between councils to accommodate peaks and troughs in the work
15. Notwithstanding the progress made to date, there is still further work to be done to bring the councils together and deliver a service which is better, faster and lower cost.
16. In general, district legal teams vary in size according to the council. Often there are issues with resourcing because the council relies on a small number of key people who have specialist skills which are crucial to the delivery of many services and corporate projects. There is fixed capacity and demand for legal support often exceeds supply. This is typical of both Reigate and Banstead BC and Spelthorne BC. The councils want to rely on their own in-house lawyers rather than remote private sector partners which usually cost more and lack the insight into local issues, organisational challenges and priorities. There is still a mixed economy of provision for legal services because the councils supplement their teams with extra outside capacity and, on bigger projects, will deliberately externalise legal risk onto another organisation's professional indemnity insurance as part of a project risk management strategy.
17. The councils want a quality service, which is more responsive and more resilient. A shared service agenda can help meet those needs by increasing the overall resources available and deploying senior and junior lawyers more effectively. The councils also want to seek savings from all their support services because of the financial pressures on local authorities generally. However, cutting back in legal often raises costs elsewhere in a council. Many Councils have found that cuts in recent years have left operating models for legal services at a basic level. This is true in the case of both Reigate and Banstead BC and Spelthorne BC.
18. There is increased demand on legal services from (i) the rise in commercial activity in local authorities after the recession (ii) projects arising from the need of councils to seek financial stability through new ventures. If legal teams are to provide an

increase in quality services and some contribution to the financial picture in the councils then they have to look at a growth agenda and the opportunity to bring in extra income from elsewhere.

19. Councils can increase quality and resilience by working together. One solution is to offer to extend the current shared service arrangement to other Surrey districts. If councils achieve a critical mass of activity to cover all the core areas of legal work with strength and depth (planning, litigation, contracts and commissioning, property and regeneration, governance) they are in better position to reduce reliance on outside resources and develop services to trade with other public sector partners as an income stream. Councils want to have specialists available for the many different aspects of their business, but to allow these specialisms to develop requires a team with that strength and depth. Working together with others can bring about improved service at lower cost.
20. The proposal in this paper is to build on the good reputation of the councils and their legal teams by building a larger legal services team which could have the capacity to trade with other public services. We would aim to provide a range of high quality advice from our knowledgeable and trusted advisors to local authorities in Surrey and their partners only. We would have a clear focus on shared values of public law legal advice focussed on Surrey. The marketing strategy would include the proviso not to work with partners who may present a conflict of interest or who take us away from the core business of providing public services to Surrey residents.
21. Such partners may include, blue light services, CCG's, charities, health service bodies, housing associations, local government spin-out companies, schools, voluntary organisations etc.
22. The proposal is to extend the current legal services partnership into a commercial trading arm of the Council.
23. All councils can provide discretionary services to other parties under existing legislation. If they do so, they have to use a cost-recovery strategy (not a profit making strategy). If the purpose of the council is to develop profit from commercial services then this has to be done via a company. A company selling legal services has to be regulated by the Law Society. Previously, only solicitors could own and run such businesses, but now with a change in the law and de-regulation in the legal services sector, councils can own and run legal services businesses. These are called Alternative Business Structures (ABS). They are businesses regulated by the Law Society as non-solicitor owned legal services businesses. These changes in the law from the Localism Act 2011 and the Legal Services Act 2007 have combined to lead to the development of new council owned trading legal businesses.
24. In other parts of the country shared legal services have gone into trading. Various county councils have either traded services to other local authorities by themselves or developed shared services with others and then traded. Notably, Kent CC, Essex CC, and Norfolk CC have traded services by themselves. Cambridgeshire CC and Northamptonshire CC have formed (Local Government Shared Services) LGSS to trade. This has now become an ABS, LB Harrow and LB Barnet formed HB Public Law which has now expanded to LB Hounslow. HB Public Law is now also an ABS with a strategic tie-in with Bevan Brittan.

25. In terms of the commercial returns, some of the ABS companies are in their infancy so full P&L are not available from companies house. The legal services which have traded with other local authorities (under existing spare capacity and cross-boundary rules) have reported significant income streams in their area, for example:

Council 2014-15 budget book	Staffing £000s	Non staff £000s	Expenditure £000s	Income 000s	Net Exp 000s
Kent CC	7,290	2,761	10,051	-12,407	-2,356
Essex CC			8,321	-10,402	-2,081
Norfolk CC			4,242	-4,644	-401

26. In their strategic 5 year business plan for 2015, LGSS reported a 2013/14 turnover of £6.5m with a £1.3m surplus using the strategy outlined in this paper. Interestingly, they also reported a 294% increase in external income in the past 3 financial years. These figures are being explored further as part of a feasibility study for the further development of the Reigate and Banstead BC and Spelthorne BC initiative.
27. The teams in the above examples are much bigger than district legal teams; they would usually have around 60 lawyers each compared to the 10 or under in most district council legal teams. In order to be able to deal effectively with existing council requirements and to develop responsiveness, resilience and some extra capacity with which to trade, it will be necessary to work with other like minded organisations to pool resources and work collaboratively (a) to develop the efficiencies from which to release fresh capacity and (b) to ensure quality, capacity and resilience for the partner councils in their own existing workload. For this reason it is proposed to extend this partnership opportunity to other Surrey district councils.
28. Initial discussions have revealed interest in other councils in Surrey which needs to be investigated and developed at a political level. The more councils that join the arrangement, the quicker the new business can develop the income streams that others have found in their areas. Note that the County Council is embarking on a similar initiative with East Sussex CC and is likely to be in the same market for supplying legal services to public law partners in Surrey.
29. The benefits to councils in Surrey of working together would include:
- Improved quality by developing strength and depth in each specialist area
  - Increased resilience from larger teams
  - Ability to attract talented staff
  - Ability to realise efficiencies more quickly
  - Development of income streams from other public service partners
  - Profit from a commercial trading arm

30. The proposal in this paper is that the existing shared service is externalised into its own Local Authority Trading Company (LATC). This is primarily for these reasons:
- Ability to trade under a clear brand
  - Freedom to develop traded services outside the Council
  - Employment of staff on a single set of T&Cs
  - Single ICT environment to improve delivery of the core service
31. This proposal is supported at Spelthorne BC which is investing in consultancy support to establish the feasibility of such a wider project. It is envisaged that a full business case will be presented to Executive later this year in plenty of time for the service and budget planning process. Reigate and Banstead BC has allocated project management resource to support the development of this initiative. Work is in place to clarify all associated costs with establishing such a venture including one-off set up costs, revenue costs and any grant aid available from government for the development of initiatives such as this.

#### **COMMERCIAL TRADING PROPOSAL FOR ENVIRONMENTAL HEALTH**

32. The Environmental Health team provide a wide range of enforcement services on behalf of the Council. Within the team there are a number of professional disciplines that have expertise in functions such as licensing, regulatory, health and safety, housing, pest control, pollution control and food hygiene. These services are traditionally not traded by local authorities because the focus of the councils has been to enforce on behalf of the public good. However new models of working are emerging which allow the enforcement effort of regulators to be paid for by the businesses which cause the issues – for instance the Health and Safety Executive now charges businesses for its time in enforcing legislation instead of this falling back on the taxpayer.
33. Whilst the services currently operate on an enforcement model, businesses which need to comply with the law also need access to consultancy advice in order to meet the requirements of the relevant regulator. This may mean that the Council has an opportunity to trade its services on such a basis outside the borough boundary where there is no conflict of interests with the Council's statutory powers.
34. Plans for this initiative are at an early stage and include seeking out evidence of other successful alternative models and possible partners. Executive is asked to note this direction of travel and to endorse the principle of developing the in-house expertise into new business models where a market exists and conflicts of interest can be dealt with appropriately to safeguard the public interest.

#### **DEVELOPMENT OF A COMMERCIAL MODEL IN REVENUES AND BENEFITS**

35. Executive will be aware of the Council's previous strategy to engage with a private sector partner to develop commercial services from a number of council functions. Since this proposal was unsuccessful the Revenues and Benefits service has explored other options for the development of a commercially traded service.
36. The service has opened discussions with other private sector partners to explore opportunities. As yet these have not materialised into firm proposals for new service

developments, though work continues to identify synergies with commercial partners and opportunities to extend the council's in-house work to other partners.

37. A number of developments are currently being explored to generate additional income. First the utilisation of expert skills in the Council which can be provided to other Councils for a fee. Secondly, the development of a fraud service given the changes which are occurring in the sector and the transfer of staff from the Council to DWP to deal with general fraud work. The Council is exploring the requirement of organisations to utilise the expertise of fraud investigation which the Council has developed over a number of years.
38. Executive is asked to note the strategy of developing these other sources of income.

### **RISKS**

39. The worst case scenario for the development of these extended services is that after expending one-off costs, the councils would have the same service levels at similar costs. In that sense, there is little risk to considering a wider commercial approach, and the Council will be able to assess the level of those risks once the business cases are presented. In developing the proposals, the Council will ensure that it has appropriate levels of control over the proposed partnerships.

### **GOVERNANCE**

40. In order to deliver this strategy, transparent simple governance arrangements will be put in place for the councils to monitor the delivery of the chosen solution and its effectiveness.
41. The Deputy Chief Executive is responsible for overseeing the development of the Council's partnership activities and projects. Expertise from the Management Team will also be sought to support the development of these partnership projects given the cross cutting implications for ICT, Human Resources, Finance etc.
42. It is planned to submit a further business case for Legal Services and Building Control to Executive in October 2015. The Environmental Health proposal is at an earlier stage and will therefore be presented at a later time.
43. At this stage the proposal is to seek approval to the broad direction of all three projects.

### **LEGAL IMPLICATIONS**

44. There are no specific legal implications associated with this report. However, if the partnership progresses to formal agreed status then the relevant statutory powers and other legal implications will be carefully considered.

### **FINANCIAL IMPLICATIONS**

45. There are none arising from this report immediately. Future implications will be reported.
46. Councillors should be aware that whilst these partnerships offer the opportunity for modest cost savings, or opportunities to control expenditure / increase income, the services will not be a major contributor to the Council's future financial stability. The



services are not of a scale to make such a significant impact, but each project offers benefits which makes them worthwhile on their own account.

### **EQUALITIES IMPLICATIONS**

47. There are no equality implications although an equalities impact assessment will be carried out for any partnership activity that sees significant changes in how or where staff work or indeed the levels of service we will provide to the public or access arrangements for them.

### **CONSULTATION**

48. Where partnership proposals are likely to have an impact on staff, consultation with staff is undertaken and all legal processes are followed.

### **POLICY FRAMEWORK**

49. The service and financial plans for individual services area agreed annually as part of the budget setting process, and in line with the policy and budget framework.

**Background papers:** There are none.