



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

<b>REPORT OF:</b>	ACTING HEAD OF LEGAL
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<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	23 March 2017
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR VICTOR BROAD

<b>KEY DECISION REQUIRED:</b>	YES
<b>WARD (S) AFFECTED:</b>	ALL

<b>SUBJECT:</b>	<b>PROPOSED APPROACH FOR LEGAL SERVICES</b>
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**RECOMMENDATIONS:**

- (i) That the cessation of the Spelthorne and Reigate and Banstead Borough Council Legal Partnership be noted; and
- (ii) That the proposed approach to an independent Legal Services be endorsed in principle and the Acting Head of Legal be authorised to develop a commercial vehicle to deliver Legal Services.

**REASONS FOR RECOMMENDATIONS:**

The recommendations above will enable the council to develop and maintain separate legal support for Reigate and Banstead BC services as an immediate priority. Whilst, in parallel, developing and delivering a project to commercialise legal services during the financial year 2017/18 which supports the Council's 5 Year Plan to develop a more commercial approach to our services and develop new revenue income sources.

**EXECUTIVE SUMMARY:**

On 19 June 2014 the Executive endorsed the creation of a Legal Services partnership with Spelthorne BC. Both councils have benefited from the shared service over the past 3 years, as have staff who have gained experience and skills through supporting a wider variety of cases across both organisations. The requirements of both partners has now changed and as a result the shared service will be coming to an end on 31 March 2017.

The cessation of the Legal Services Partnership on the 31 March creates some immediate issues around staffing resources, where staff from Spelthorne BC are no longer part of the service, but also provides the opportunity for the Council to further develop its' commercial agenda and create a Company that can attract the skilled staff required to meet the Council's ambitious commercial agenda.

The Partnership was comprised of staff who were either contracted to Reigate and Banstead BC or Spelthorne BC. When the Partnership ends staff will remain with their contracted organisation. This leaves gaps in terms of skills and management, not least as the former Head of Legal Services will remain with Spelthorne BC. When the Partnership ends the Head of Corporate Policy & Performance will act as Head of Legal during this period of transition to bring some stability and leadership to the service, using

temporary resources to maintain service delivery.

External support will be utilised to develop a viable project to commercialise the services during the 2017/18 financial year.

This will enable the Council to separate the legal service from the shared service with Spelthorne and provide sufficient legal support to help the Council meet its' Five Year Plan. The approach will also enable the Council to develop the opportunity of a legal Company, with the objective to become costs neutral within the first 2-years and then revenue generative to the Council in future years.

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

## **STATUTORY POWERS**

1. The Council has various duties to provide information and services to residents and businesses within the Borough. All local authorities also have a responsibility to ensure value for money for local tax payers.
2. Under section 1 of the Localism Act 2011 local authorities now have a general power that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation. Section 4 of the same Act directs that anything which is done for a purely commercial purpose should be done through a company. As any legal company may operate outside borough boundaries, this is the relevant power.
3. Any Company delivered in future could be a controlled company as defined in the Local Government and Housing Act 1989 as it is a subsidiary company of a local authority and as such the shareholder (the Council) has ultimate control over the activities and operational matters of the Company.

## **BACKGROUND**

4. When the Legal Partnership ends on 31 March, staff within the shared service will revert to their employing Council. Spelthorne employed staff will no longer be available to provide legal advice and support to Reigate & Banstead services and projects. This will result in some gaps in service.
5. The gaps could be solved by recruiting permanent staff to the legal service. However, the proximity to London and the nature of legal services means that the recruitment market is highly competitive. Qualified legal professionals have options to work in the public, private or self-employed market. In addition, the Council's ambitious commercial and property agenda means that we are increasingly requiring more specialist and experienced legal support. Recruitment in these areas is particularly challenging.
6. The Council is seeking to train and develop staff within legal services. Two apprenticeships and two paralegal positions are currently included within the establishment. These have been very successful, but require senior solicitors to provide supervision and guidance.
7. Recent attempts at recruitment exercises into certain areas have been unsuccessful and the timescales to bring someone in can be as much as 4 months (taking into account the recruitment process and contractual notice periods). The Acting Head

of Legal will therefore, be utilising temporary legal support to ensure a complete service is secured and maintained.

## **PROPOSED APPROACH**

### **Immediate priority – establish separate Reigate & Banstead legal service**

8. The Acting Head of Legal has begun to explore both the interim market for Senior Legal officers as well as the networks with external firms through partner organisations.
9. The proposed approach is to:
  - a. seek a short-term managed service or interim support to help establish a separate Legal Services team for Reigate & Banstead and ensure legal support for services and projects is maintained;
  - b. undertake a review of current provision
  - c. engage with internal clients about future projects and support in order to understand future client need;
  - d. review the service and financial performance of the service; and
  - e. Develop a project to create a legal services company during FY 2017/18
10. It is anticipated that the initial period of support required would be 3 months.
11. Due to the immediacy of this need arising and the risk to legal services a fully costed proposal has not been developed but will be worked through in the coming weeks as the Acting Head of Legal develops opportunities with potential partners or interim resources.
12. The final decision for support will be made in conjunction with the Chief Executive and Section 151 Officer to ensure it will deliver value for money. Any arrangement that is put in place will be closely managed by the Acting Head of Legal.

### **Secondary priority – sustainable, commercial service**

13. As set out earlier in the report, the Council faces a number of challenges in the delivery of legal services going forward:
  - Recruitment and retention of qualified staff
  - Increasing demand for specialised legal support
  - Managing increasing costs for legal services
14. In order to manage these challenges and provide a sustainable service, it is recommended that an alternative delivery model be developed:
  - Continuing with a traditional, wholly in house service is unlikely to enable the Council to overcome the challenges above, given this is how the Council has previously operated.
  - A new shared service is not recommended. The experience of the existing service has highlighted that both Councils need to maintain a shared vision for legal services. However, the nature of local government and the wider public sector is one of continued and significant change. As a result, it is difficult to identify a partner for a long term shared service.

- A company model, which offered a more attractive recruitment opportunity for staff, and offered the potential to trade and generate additional income, could overcome the challenges above.
15. It is vital that there is a robust set of data and evidence base that is pulled together to inform the development of a suitable commercial vehicle.
  16. It is therefore proposed that a secondary priority for legal services will be to pull together a proposed approach to developing a commercial vehicle ensuring it meets current and future need.
  17. It must be commercially viable, have robust performance management tools and processes (such as time recording system, efficient workflow, proper account management approach etc....) and must deliver high quality services to the Council in the first instance and then to external clients to drive revenue generation.
  18. As set out above, the Acting Head of Legal is seeking interim support to manage the service. An additional benefit of working with external support is the wealth of experience and knowledge that can be gleaned to help inform the development of a commercial vehicle for legal services.
  19. The Executive is asked to endorse the above approach and authorise the Acting Head of Legal to develop a fully costed proposal.

## **LEGAL IMPLICATIONS**

20. Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others i.e. this includes the setting up of a Company as described in this report.
21. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers) and to the public law requirements to exercise the general power of competence for a proper purpose.
22. Any legal services company that is created will be required to register with the Solicitor Regulation Authority (SRA) which is the regulator for Solicitors and legal firms and will be subject to an application to the SRA for the creation of an Alternative Business Structure (ABS) to enable the Company to trade.

## **FINANCIAL IMPLICATIONS**

23. Whilst every effort will be made to keep spend within the existing budget there will be some investment required in the short and medium term to deliver the approach outlined above.
24. It is anticipated that any funding required will be sourced from the Corporate Plan Delivery Fund.
25. The spend will be managed under a project budget which will fund the costs associated with the cessation of the Partnership, costs associated with the resource gaps currently identified, and costs associated with the development of a commercial vehicle option through which legal services can trade in the future.

## **RISK MANAGEMENT CONSIDERATIONS**

26. The priority of the Acting Head of Legal is to ensure there is minimal disruption to legal support in the Council and risks are effectively managed as a matter of urgency.
27. Through developing the proposal for a commercial vehicle the Acting Head of Legal will ensure that there are robust checks and balances to safeguard that a company operates within agreed parameters and can assure members that any future risks are properly managed.

## **OTHER IMPLICATIONS**

28. If the Council were to establish a legal services company it would likely give rise to an impact under the Data Protection Act (Privacy Impact Assessment). It will be for the Company to register with the Information Commissioner and comply with regulatory requirements about the use of personal data.

## **MONITORING OFFICER**

29. Under Section 5 of the Local Government & Housing Act 1989 (as amended), the Council has a duty to appoint a Monitoring Officer. Neither the Head of Paid Service nor the Chief Finance Officer can hold the position of Monitoring Officer.
30. As set out in the report, the former Head of Legal Services will remain with Spelthorne BC following the cessation of the shared legal service. As a result, the Council is required to appoint a new Monitoring Officer.
31. The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's Constitution and our arrangements for effective governance. These duties include maintaining the Constitution, ensuring that no decision or omission of the Council is likely to give rise to illegality or maladministration and promoting high standards of conduct. A full list of the Monitoring Officer's responsibilities and delegated powers is included within the Councils' Constitution.
32. Article 13(b) of the Constitution provides that it is the responsibility of full Council to designate the Monitoring Officer. Employment Procedure Rules state that the appointment should be on the recommendation of the Employment Committee. A meeting of the Employment Committee will be called in order to make a recommendation to Council on 13 April 2017.
33. Until then the current Deputy Monitoring Officer, Mr Gavin Handford, will assume the role as Acting Monitoring Officer.

## **CONSULTATION**

34. Consultation and engagement will continue to be undertaken with all staff with legal services, to establish the separate service at Reigate & Banstead and inform the future structure and operating model.
35. Regular updates will be provided to the Leader of the Council.
36. As set out within the report, internal consultation will be undertaken with key service stakeholders and the Management Team to identify future legal service demands.

## **Background Papers:**

1. Corporate Plan 2015-2020 - [http://www.reigate-banstead.gov.uk/info/20205/plans\\_and\\_policies/280/our\\_5\\_year\\_plan](http://www.reigate-banstead.gov.uk/info/20205/plans_and_policies/280/our_5_year_plan)