

## CABINET

25 JANUARY 2011

### REPORT OF THE LEADER OF THE COUNCIL

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| <b>Title:</b> Review of Legal Services and Future Proposals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>For Decision</b> |
| <p><b>Summary:</b></p> <p>As part of the review of support services started in 2010 a study has been undertaken of the Council's Legal service. This was carried out by the Head of Legal and Democratic Services at Thurrock Council following discussions between the respective Chief Executives.</p> <p>This review has considered:</p> <ul style="list-style-type: none"><li>• The effectiveness of the current arrangements within the Legal Practice compared with the expectations of the review carried out by Rockpools in 2007.</li><li>• The future requirements for the Legal service.</li><li>• Options for providing the future service given the need to make significant savings.</li></ul> <p>The review considered a range of options for the future delivery of the Legal service. These were (a) possible wholesale merger of Legal and Democratic Services at LBBD and Thurrock, (b) shared legal services between the two authorities but with separate heads of service, (c) a shared head of service between the two authorities with sharing of services where feasible, and (d) separate services with separate heads of service.</p> <p>Officers' advice is that the third option would allow the idea of a shared head of service to be piloted at the same time as proceeding with an early review of the service and the implementation of a changed structure during the first half of 2011/12. The flexibility to decide towards the end of 2011 on whether to have a permanent shared head of service and Monitoring Officer would also be an advantage.</p> <p>This option also allows time for wider examination of Partnership possibilities leading to a decision by December 2011 on the way forward for future years.</p> <p><b>Wards Affected:</b> None</p> |                     |
| <p><b>Recommendation(s)</b></p> <p>The Cabinet is recommended to:</p> <ol style="list-style-type: none"><li>Agree to a pilot under which Barking and Dagenham would second from Thurrock for the period 1 April 2011 to 31 March 2012, on a part-time basis their Head of Legal and Democratic Services to jointly fulfil the role as head of service and Monitoring Officer for both authorities on a shared basis. Authorise the Chief Executive to negotiate and finalise the arrangements with Thurrock Council;</li><li>Note that the arrangement would not involve any formal merger of services but would allow any opportunities for sharing of services to be explored. At the same time a restructure of the Legal Practice at Barking and Dagenham would be</li></ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                     |

implemented which, in particular, would see a reduction in the number of managers in order to make savings in the order of 20%, as has already been agreed as part of the budget considerations;

- (iii) Note that the relevant JNC Assembly Panel will be asked to consider any related pay issues, and that the Assembly will be required to make the final decision in terms of the appointment of the individual concerned as Monitoring Officer; and
- (iv) Agree that the situation be reviewed after six to nine months by the Chief Executive in consultation with the Corporate Management Team, Legal Practice managers and Thurrock colleagues, and reported back to the Cabinet by the end of 2011 in order that a final decision can be taken on future arrangements.

#### **Reason(s)**

To assist in achieving the revenue savings targets identified as part of the 2011/12 budget process and to ensure that the Council has an effective and efficient legal service.

#### **Comments of the Chief Financial Officer**

The proposal is a way forward for operating the Legal service and will allow the necessary restructure to take place to enable savings of between £450k and £500k to be achieved in line with the requirements of the support services review. These savings should accrue during 2011/12 and it is important to ensure matters are dealt with as quickly as possible, in line with Council procedures, and managed accordingly.

#### **Comments of the Legal Partner**

Members are asked to approve the entering in to a shared arrangement of a joint Monitoring Officer and Head of Legal and Democratic Services between the two Councils as outlined. The following points should be noted:

1. As the report highlights, the appointment of a joint Monitoring Officer would need to be approved by Assembly. It should in this regard also be noted that s.5 of the Local Government and Housing Act 1989 obliges local authorities to appoint one of their staff as the Monitoring Officer for their authority. The proposal is to appoint an employee of another authority (Thurrock). Where authorities have entered into arrangements to share a statutory officer, efforts should be made in consultation with the respective authorities' legal teams, to give effect to the requirements of the legislation before the statutory appointment is made.
2. Since Thurrock Council is subject to the same statutory obligations outlined in 1 they will need to agree to share their Monitoring Officer with Barking and Dagenham, so efforts should be made to co ordinate governance and decision making in the two authorities
3. In order to achieve the savings, the review of the Legal Practice is likely to propose, amongst other things, the deletion of the six current legal management posts to be replaced by two Group Manager posts reporting to a Divisional Director of Law and Monitoring Officer shared between two authorities, at least in the short term. Inevitably such a reduction in legal support and expertise combined with an inevitable merging of certain distinct specialisms will mean there is a reduction in

capacity and expertise at the Council's disposal than at present and Members will wish to be satisfied that the final structure is fit for purpose in the light of the legal responsibilities across the Council's functions and associated risks.

4. Members will also wish to be satisfied that the findings and recommendations of the review have been fully shared and consulted upon with staff and their Unions and that they have taken account of any feed back from staff within the current Legal Practice on the report.
5. It is to be noted that if legal issues arise in implementing the review, including the application of the Council's change procedures, that the Council may wish to seek independent advice as the Legal management team are directly affected by the proposals.

|                                                 |                                         |                                                                                  |
|-------------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------|
| <b>Chief Officer:</b><br>David Woods            | <b>Title:</b><br>Acting Chief Executive | <b>Contact Details:</b><br>Tel: 020 8227 2137<br>E-mail: david.woods@lbbd.gov.uk |
| <b>Cabinet Member:</b><br>Councillor Liam Smith | <b>Portfolio:</b><br>Leader's Portfolio | <b>Contact Details:</b><br>Tel: 020 8227 2101<br>E-mail: liam.smith@lbbd.gov.uk  |

## 1. Background

- 1.1 A new structure for the Legal Practice was established in 2008 following an external review of the service. Two and a half years on a review has been carried out, steered by the need to make significant savings across all support services.

## 2. Scope of the Review

- 2.1 The scope of the review was:

- To carry out a review of Legal and Democratic Services at Barking and Dagenham (LBBB) with efficiencies, economies of scale and practicalities in mind, with a view to exploring, given knowledge already of Thurrock's resources across these areas, the following options:
  - (1) The potential for /feasibility of a wholesale merger of Legal and Democratic Services between Thurrock and LBBB.
  - (2) The potential for /feasibility of keeping separate teams at Thurrock and LBBB with individual "Heads of Legal and Democratic Services/Monitoring Officers" (heads of service) but with shared service provision where possible.
  - (3) As (2) above but with a combined, joint, head of service.
  - (4) Keeping completely separate teams with no sharing at all but nevertheless suggesting a possible new Legal staffing structure for LBBB that reduces costs (in particular management costs).
- To undertake this review as quickly as possible but at the same time afford all parties concerned at LBBB (Legal and Democratic Services managers and staff,

clients, the lead Member etc) the opportunity to contribute by undertaking separate or group interviews with them as appropriate.

2.2 The following desired outcomes were to be borne in mind:

- (a) Efficient and effective services that meet the priority needs of clients at lowest cost.
- (b) Least reliance on external legal provision and extinguishment of the need to use locums (i.e temporary staff), other than in cases of absolute urgency.
- (c) Significantly reduced management costs, particularly in the legal service where 20% savings need to be found from 1 April 2011 from an overall internal legal budget of currently £2,027,440 controllable costs.
- (d) Excellent Practice and budget management in the Legal service.
- (e) Lexcel accreditation for the Legal service.

2.3 Over 50 members of Barking and Dagenham staff were consulted including staff at every level in Legal Services, managers in Democratic Services, the Chief Executive, Corporate Directors, Heads of Service, and Group Managers in front line services and HR.

2.4 The draft findings and recommendations were discussed with the Chief Executives of LBB and Thurrock Council on 14 December 2010 and subsequently presented to all staff in Legal Services. At that meeting staff worked in groups to develop the pros and cons of each option as well as identify the benefits and risks of the recommendations.

### **3. Financial Issues**

3.1 These are covered in the "Comments of the Chief Financial Officer" above. In addition it is relevant to note that during the pilot, savings, yet to be determined, will accrue as a result of the sharing of the head of service.

### **4. Legal Issues**

4.1 These are covered in detail in the "Comments of the Legal Partner" above.

### **5. Other Implications**

#### **5.1 Risk Management**

The proposal to reduce capacity could impact on the ability to fully meet the Council's needs in relation to high level legal advice. This issue was considered as part of the review but will be closely monitored during the 'pilot' phase to ensure that the Council continues to receive the best possible legal advice and service.

#### **5.2 Contractual Issues**

If approval is given to go ahead, an agreement will be drawn up between the two authorities regarding the secondment of Thurrock's head of service.

#### **5.3 Staffing Issues**

The review findings were formulated after consultation with staff and senior managers from Barking and Dagenham. Legal staff have been involved in a workshop to look at the future requirements for the Legal service and they will be

kept fully involved and informed of the plans for reforming the service. The Chief Executive and the Divisional Director of Legal and Democratic Services met informally with all Legal Practice staff before Christmas to explain the proposals and gave an assurance that all necessary formal consultations would be undertaken once a decision had been taken by Members in relation to the piloting of a shared head of service.

#### 5.4 **Customer Impact**

The sharing of a head of service (including the Monitoring Officer role) will mean that Members and client departments will not have full time access. It is not envisaged that this should cause any problem but the advantage of the pilot is that this factor can be weighed up as part of the review of the situation later in the year.

In relation to the general reductions which will be made to the service as part of the overall savings proposals, and as with other support services which are being reduced, there will be a heavier expectation on managers across the Council being competent to deal with more routine matters without the need for reliance on support from the centre. Senior management within client departments will also need to be very clear as to what is a priority and what can and cannot be afforded.

### 6. **Options appraisal**

6.1 Details of the options examined as part of the review, with pros and cons in each case (which includes those put forward by Legal staff) are provided below. All options will lead to a restructure of the Legal Practice.

#### 6.2 **Option 1 – wholesale merger**

6.2.1 This is clearly an option which would bring economies of scale and significant savings and is feasible to deliver provided there is commitment from both Thurrock and LBBD management and staff. It is not an option which can be implemented immediately but could follow on if Option 3 were to be implemented.

| <b>Pros</b>                                                                                            | <b>Cons</b>                                                                         |
|--------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Potential significant savings in merged teams of lawyers                                               | Cannot be implemented without a lot of preparation, which will take time            |
| Potential significant savings in merged Democratic Services                                            | Terms and conditions will need to be harmonised                                     |
| Further savings through merged administrative support                                                  | Host authority and TUPE issues will arise                                           |
| Critical mass / economies of scale and reduction of external spend                                     | Extent of any conflict issues are unknown                                           |
| All areas of expertise could be covered including specialist areas and external spend could be reduced | Full commitment of both organisations and staff needed but cannot be gained quickly |
| Opportunity to smooth out peaks and troughs in workloads                                               | There could be loss of local presence and reduced accessibility                     |

| Pros                                                                                                   | Cons                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| More opportunities to conduct advocacy in house as there will be sufficient officer cover              | Member perception could be negative                                                                                                          |
| Resilient teams with cover for smaller teams and deals with temporary shortages                        | Opportunities to look at other London Boroughs may be missed which may be more suitable – although less likelihood of conflict with Thurrock |
| Assists with recruitment and retention - opportunity for better career development in a larger service | Clients will have to learn to share managers and staff – culture shock                                                                       |
| Opportunity for external income                                                                        | Issues of practicality of location and cost implications                                                                                     |
| Better management                                                                                      | Potential job losses                                                                                                                         |
| Accessing available training structure                                                                 | No model to see what this would look like in practice – details needed                                                                       |
| Accessing established case management system                                                           | Financial implications to merge systems.                                                                                                     |
|                                                                                                        |                                                                                                                                              |

- 6.2.2 The pros of this option are obvious in terms of potential savings and the economies of scale it would bring, but in addition to that both legal and democratic services would be resilient in providing cover for areas of practice which are provided by small teams. This would potentially apply to employment, prosecution, education, adult social care work, where there are peaks and troughs in work and also where the demand for work in each authority is perhaps less than one full time equivalent lawyer. A good example is education or where there is only one person providing the advice and representations and in their absence on leave or sickness there is no cover.
- 6.2.3 Furthermore, there are significant advantages to be gained in sharing admin support, practice management or business support, case management systems and most importantly the administrative work that is required in implementing and maintaining Lexcel accreditation.
- 6.2.4 If there is a commitment to make a wholesale merger happen and time is taken to implement this then there would be no real disadvantages other than conflicts of interest between the two authorities. However, this can be addressed through a conflict protocol which will need to be in place. A conflict protocol has been tried and tested in the Lincolnshire legal services partnership and similar protocol can be used in LBBDD.

### 6.3 Option 2 – separate head of service/ MO but share services where possible

6.3.1 This is an option which has potential and is feasible, however, when there are two separate heads of service, two separate management teams, the sharing arrangements are likely to be limited.

| Pros                                                                                                       | Cons                                                                                                                |
|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| Traditional and familiar to all                                                                            | An opportunity for greater sharing and therefore greater efficiency savings lost by not sharing the head of service |
| Sharing is possible but likely to be limited to appointment to joint posts                                 | Sharing likely to entail trading to cater for unequal needs of each authority                                       |
| Gives greater opportunities to maximise services – easier to test progress                                 | Opportunity to reduce management costs lost. Too many managers                                                      |
| Keep your own identity                                                                                     | Cuts may affect one structure more than the other – issues around uniformity.                                       |
| Share training and of knowledge /expertise/ benchmarking etc                                               | Potentially not cost effective – would need deeper knowledge of caseload etc                                        |
| Visible to clients                                                                                         | “Them and Us” culture                                                                                               |
| Opportunity to develop expertise of working outside of a London Borough and build up working relationships | Difficult for individual lawyers as may have to work for new clients                                                |
| Savings in merged teams                                                                                    | No certainty/stability                                                                                              |
| Presence of management in both boroughs - accessibility                                                    | Difficult to have a shared vision and ethos                                                                         |
|                                                                                                            | Difficult to manage client relationships and expectations                                                           |
|                                                                                                            | Different case management systems.                                                                                  |
|                                                                                                            | Is Thurrock right partner for sharing - has it been completely explored?                                            |
|                                                                                                            | May be difficult to work out who would do what                                                                      |
|                                                                                                            | No savings in terms of managers - paying out for two heads.                                                         |
|                                                                                                            | No economies of scale                                                                                               |
|                                                                                                            | Access to clients / time lost travelling.                                                                           |

Going to spend time in partnership working but may not deliver

6.3.2 There are a number of legal services in England which have been exploring this type of shared provision without very much success. Where there is sharing it has been on a traded basis because otherwise it does not make any sense for a particular authority to give up its resources without an income. The only other way of exploring limited sharing with separate services would be to make joint appointments through joint advertisement and pooling of budgets. This has not happened elsewhere as far as I know. However, this type of option cannot be dismissed and has the potential to work but the returns in terms of savings would be limited to a few posts.

#### 6.4 Option 3 – shared head of service and share services where possible

6.4.1 This option is as option 2 above, but with a combined, joint head of service. This is the option that is recommended in this report as the one which has the most potential to deliver significant savings, increased efficiency and more resilient services and which can be implemented immediately. This option also allows flexibility to move to option 1 or option 4 following a trial.

6.4.2 This option would entail Thurrock and LBBDD sharing a joint head of legal and democratic services/Monitoring Officer with shared provision were possible. This option can be implemented fairly quickly and is proposed would be for an initial period of up to twelve months, to allow LBBDD to make changes quickly and assess the practicality of the arrangement long term.

| Pros                                                                                          | Cons                                                                                  |
|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| More efficient use of use of public resources                                                 | Potential conflict of interest but can be addressed with a conflict protocol          |
| Significant savings in merged teams of lawyers even if no whole sale merger at first          | Member perception could be negative but can addressed through continuous engagement   |
| Significant savings on merged Democratic Services – this will be greater for LBBDD            | Commitment of both organisations and staff needed                                     |
| All areas of expertise could be covered including specialist areas and reduces external spend | There could be loss of local presence and reduced accessibility                       |
| Critical mass / economies of scale and reduction of external spend                            | Difficulties for a combined head to manage/lead both areas – very demanding           |
| Further potential savings in merged admin support                                             | How will they be split? How do you draw a line between what is shared and what isn't? |

|                                                                                                         |                                                                                                    |
|---------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Opportunity to smooth out peaks and troughs in workload                                                 | Client's perception of the service: are they aware what it means to get 50% of a HoS and managers? |
| More opportunities to conduct advocacy in house as there will be sufficient officer cover               | May be difficult to incorporate needs and expectations of two different clients.                   |
| Resilient teams with cover for smaller teams and deals with temporary shortage                          | Bias by heads of service / Staff allegiances to "their" authority                                  |
| Assists with recruitment and retention and career development                                           | Higher risk of job losses                                                                          |
| Better career opportunities for trainees and others when pooling separate teams to create a larger ones | Although head of service can be appointed now, will take time to implement.                        |
| Can be implemented quickly                                                                              | May not work                                                                                       |
| Potential for external income                                                                           |                                                                                                    |
| The only options that allows flexibility to move to other options (1 or 4)                              |                                                                                                    |
| Opportunity to learn and share good practices from each other                                           |                                                                                                    |
| Creativity and innovation                                                                               |                                                                                                    |
| Get to really know our staffs strengths and weaknesses                                                  |                                                                                                    |
| Improve on strengths of different teams                                                                 |                                                                                                    |
| Joint head provides opportunity for shared goals                                                        |                                                                                                    |
| Flexibility further down the structure rather than immediate merger                                     |                                                                                                    |

- 6.4.3 In interviews the option of sharing was discussed and there is an appetite in both LBB and Thurrock to explore shared teams with a view to creating centres of excellence. For example, one authority could lead on safeguarding and the other, for example, on prosecutions.
- 6.4.4 There is a clear advantage of this option in terms of more effective overall use of public service resources. It creates economies of scale for two relatively small legal teams.
- 6.4.5 There are significant opportunities of creating critical mass and supporting specialist areas like education, adult social care, employment etc. The areas such as prosecution and litigation can be covered better in larger teams.

6.4.6 There is more opportunity to cover advocacy in house if there are more people and better officer cover. There are also opportunities for generating income through trading during off peak periods.

6.4.7 Thurrock is an established member of the Essex Legal Services Partnership and LBBDD can benefit from that partnership. Currently significant savings are achieved in relation to training of lawyers through the partnership.

6.4.8 An added advantage of this option is that staff morale can be better managed, as uncertainty will be significantly reduced by the fact that this review will seamlessly continue to implementation with greater involvement of staff.

**6.5 Option 4 – separate services with separated heads of services**

6.5.1 This option involves keeping completely separate teams with no sharing at all, but with a new legal staffing structure for LBBDD which reduces costs, in particular management costs.

6.5.2 This option is also feasible and could be implemented within six months. It would require a new head of legal services for LBBDD who is a qualified lawyer. Thereafter LBBDD could adopt a traditional legal and democratic services structure with one head of legal services directly managing the group manager for democratic service and three to four legal services group managers, for example, (1) property and planning, (2) contracts and procurement, (3) safeguarding (adults and children) and education, (4) litigation team including civil and criminal litigation, employment as well as housing and anti social behaviour.

6.5.3 Any number of combinations of team could be created and that should be left to the new head of legal services to decide depending on their own expertise and preference.

6.5.4 This structure would give the required number of span of control for the head of legal services. However, below the level of Head of Legal Services I would not recommend team managers managing 8 plus staff. It is most cost efficient for legal services managers to undertake significant and serious cases which means they should manage between 3 to 5 lawyers.

| Pros                                                                                                                                                             | Cons                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Traditional and familiar to all and tried and tested                                                                                                             | An opportunity for greater sharing and therefore greater efficiency savings lost                           |
| This model works in a vast number of authorities and should work for LBBDD provided the head of legal services has good management skills - and legal knowledge. | Won't make the savings that are realistically going to be required and the service will be set up to fail. |
| Maintain contact with the Council's grassroots                                                                                                                   | No opportunity to use knowledge and systems                                                                |

|                                                                                                                         |                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Maintains a sense of identify of this community                                                                         | Lost opportunities for sharing expertise                                                          |
| Ensures better client care/ accessibility<br>Easier to accommodate clients' needs as can structure service accordingly. | Will need restructure and more savings within the current structure could lead to more job losses |
| Take stock of structure "shape up" before joint services considered                                                     | Restructure might not address issues                                                              |
| Allows flexibility to conduct a further review                                                                          | Start review again and may lose good staff                                                        |
| Less financial outlay for new IT systems                                                                                | Success would depend on new structure                                                             |
| Risk free                                                                                                               | Stagnation.                                                                                       |
| Opportunity to meet savings target without significant change                                                           | Not moving with times and not in line with LG collaborative workings                              |
|                                                                                                                         | Appears to be a reluctance to change.                                                             |
|                                                                                                                         | No innovation                                                                                     |

6.5.5 This option is tried and tested but it misses an enormous opportunity to explore shared services and to save costs and build resilient legal and democratic services between LBBB and Thurrock.

6.6 The outcomes that LBBB is seeking could be achieved through any of the options above.

**7. Background Papers Used in the Preparation of the Report: None**

**8. List of appendices: None**