

Selby District Council

REPORT

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Item 7 - Public



To:	The Executive
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Executive Member:	Cllr Mark Crane, Leader of the Council
Lead Officer:	Gillian Marshall, Solicitor to the Council

Title: Better Together Legal

Summary:

- 1.1 This report sets out the results of the review of the current trial to integrate legal services as part of the 'Better Together' collaboration with North Yorkshire County Council (NYCC). Overall the review concludes that the trial has been successful with a number of objectives achieved.
- 1.2 The review does however recognise progress against some objectives has not progressed as well as planned
- 1.3 Three options are considered based on the results of the trial: extend the trial; close the trial with no integration; or, formally integrate the legal teams.
- 1.4 Given the results of the trial, formal integration is recommended – this option provides the added expertise and resilience that has benefitted Selby during the trial period; it enables access to a broader skills mix to enhance the value that could be derived from the service; it allows flexibility of resource to better cope with peaks and troughs in workload and it facilitates operational efficiency.

Recommendations:

It is recommended that:

- i) **with effect from 1 April 2018, there be a formal integration of SDC's legal service with NYCC's legal service;**
- ii) **Delegated authority be given to the Chief Executive in consultation with the Leader of Council to finalise the terms of the agreement with NYCC;**
- iii) **the Chief Executive be authorised to transfer the affected employees to North Yorkshire County Council under the Transfer of Undertakings Protection of Employment (TUPE) provisions.**

Reasons for recommendation

To deliver service resilience and improvement, and operational efficiencies.

2. Introduction and background

- 2.1 The Better Together Programme has been established to explore opportunities for Selby District Council (SDC) and North Yorkshire County Council (NYCC) to collaborate in service delivery to the mutual benefit of both organisations and the public they serve. Through the programme a number of projects have been developed to investigate opportunities relating to property, customer-related services and back office functions.
- 2.2 A paper was presented to the Better Together Steering Group in February 2017 outlining proposals for integrating legal services for the two Councils. This built on the closer working undertaken since 2014 including the secondment of a Senior Solicitor from Selby to cover a maternity leave absence at North Yorkshire, a shared trainee solicitor and the use of the shared (NYCC) case management system.
- 2.3 The proposals were positively received and the steering group supported the initiation of a trial pilot to explore the arrangements before reporting back on recommendations for the future service.
- 2.4 For the purposes of the pilot and to aid integration between the legal teams, 4 Selby legal team members were effectively seconded to NYCC from 1 May 2017. The Solicitor to the Council (Selby) post was not seconded and has been the 'client' for the pilot arrangements. Two additional posts did not second as these were training roles and effectively need to be managed within the SDC structures.
- 2.5 This paper considers the objectives of the original proposal and reviews progress of the trial over the 9 months to end January 2018; it identifies options for the service moving forward and makes recommendations on the preferred option.

3. The Report

3.1 Trial Review

3.1.1 When the pilot was agreed we said that

- Selby would receive a minimum of 1200 chargeable hours per FTE per annum.
- That the service would aim over the year to have staff move up to 1400 hours per annum to align with NYCC
- That the SDC client teams would receive exactly the same service as they did prior to the pilot and ideally that services would improve based on established specialisms, faster turnaround (and thus lower cost to the organisations and bring an increase in capacity as the 'saved' hours are released for additional work) and increased resilience.
- That there would be a clear service level agreement with clear service standards and appropriate processes to prevent conflicts of interest arising.
- The two teams would use the shared IKEN case management system to measure and improve efficiency.

3.2 Objective 1: Selby would receive the same amount of legal support in terms of hours used based on 1200 chargeable (productive) hours per FTE per annum and aim to raise to 1400 pa

3.2.1 Based on time recording data for the period 1 April to 31 December 2017 and excluding the none seconded staff 3979 hours of work were recorded for Selby DC. This data is for a part year only. If that were projected across a full year that would equate to 4774 hours. At 1200 hours per FTA the target would be 4800 and at 1400 hours per FTE it would be 5600 hours. The data analysis shows some gaps in time recording and anecdotally it appears that SDC has had closer to 5300 hours work

3.2.2 What is apparent through service feedback is that the service provided to Selby through shared arrangements has not diminished and the responsiveness of the service and 'on site' presence has been maintained.

Overall Assessment – objective met

3.3 Objective 2: Selby client teams would receive the same service or better as they did prior to the pilot

3.3.1 Meetings have been held with Heads of Service across SDC to gain an understanding of how the pilot has impacted on the service. Valuable feedback has been obtained which will be used to improve the service whether formal integration is approved or not. The universal view was service has been maintained and the increased resilience and access to specialist lawyers (including the ability of Selby staff to specialise) has benefitted SDC. This has been seen particularly in the areas of planning, commercial property and contracts and housing.

- 3.3.2 For example, during the pilot period two members of Selby staff have left the service. Both have secured more senior roles at NYCC. The shared arrangements mean that the expertise has not been 'lost' to SDC. In one case, the staff member was the principal support to the development management service and planning committee. The staff member has continued to deliver that service to SDC notwithstanding her new NYCC role and also to undertake work on key nationally significant infrastructure projects within the Selby District at Drax and Eggborough.
- 3.3.3 As Selby were able to retain this expertise by using the shared service, the joint team made a decision to recruit a replacement with commercial property expertise, recognising the ambitions of both councils to utilise assets more effectively and operate more commercially which is also a strand being investigated under Netter Together. This lawyer is supporting Selby's growth ambitions through sales and purchases as well as undertaking work for Brierley Homes (NYCC) and Selby & District Housing Trust (SDC)
- 3.3.4 The NYCC team has been conducting the RTB sales with junior staff utilising the workflows set up in the shared case management system and has been involved in giving advice on a range of commercial contract and procurement issues.
- 3.3.5 The Head of Commissioning, Contracts and Procurement has confirmed that the service on commercial contracts and advice on terms and conditions has improved during the pilot period. Feedback from Assets and Regeneration also shows that the commercial property expertise is valued.
- 3.3.6 Capacity to undertake planning work in both Councils has been a challenge. SDC has faced a range of issues in recent months with a number of major planning projects, 5 year land supply appeals and a review of the planning service all requiring legal support. Some of the gap has been plugged using the Solicitor to the Council resource however this is not sustainable, nor in line with the long term vision that operational legal work be undertaken by NYCC in the shared service. Some s106 Agreement work was outsourced to private practice on an interim basis. Moving into 2019 the additional recruitment of a planning solicitor at NYCC should start to impact positively and the teams are exploring the use of the additional 20% planning fee to support further call off support beyond s106 work.
- 3.3.7 The increase in legal work as a result of the proposals to acquire commercial properties and deliver programmes such as empty homes, the housing development programme and the enforcement agenda has also put strain on the service. This work has been accommodated within the service hours in 2017/18 but moving forward it will be essential that the shared service is aware of the likely demands for legal work and that the SLA has a clear pricing structure for when the agreed hours are exceeded.

Overall Assessment – objective met

3.4 Objective 3: a clear service level agreement as part of the Better Together Collaboration Agreement.

3.4.1 The development of the SLA has been an iterative process. The Solicitor to the Council and NYCC Legal Services Manager have met monthly to discuss the service and performance has been monitored through monthly monitoring meetings attended by the Solicitor to the Council. . A proposed SLA based upon information obtained during this process is now being drawn up. This will cover

- The scope of services
- The quality of service
- Monitoring and measuring
- Conflicts of interest
- Income and Efficiency gains

3.4.2 The SLA will deal with the monitoring and reporting of hours spent so that SDC can accurately forecast its costs against requirements and will provide for an hourly rate for additional work required beyond core hours. This will be important as SDC continues to embed the new structures and deliver the Programme for growth

3.4.3 The draft Heads of Terms for the SLA is attached at Appendix A

Overall Assessment – this objective is in progress

3.5 Objective 4: utilise the IKEN case management system to drive efficiency

3.5.1 The shared case management system allows effective monitoring of the service. The use of workflows created in the system has supported the ability of NYCC staff to undertake work for Selby e.g. s106 agreements and Right to Buy sales and vice versa.

3.5.2 Towards the end of the pilot NYCC is preparing to roll out the IKEN client portal. This will give SDC managers the ability to log on to the secure portal and check legal cases.

3.5.3 The Iken portal Client statement report displays, within a defined period of time, all important case information per client including time spent on open files, costs incurred and responsible parties. This will allow easy monitoring but also allow service teams within SDC to see, at a glance, which matters are with the legal team and who is working on them.

3.5.4 The solicitor to the Council and one SDC Service Manager are piloting use of the portal.

Overall Assessment – objective met but there is the ability to continue this work.

3.6 Recommendations

3.6.1 Overall the trial has delivered on the majority of objectives. Following the review of the trial, 3 options are presented for consideration and the associated pros and cons are set out at **Appendix B**:

1. Extend the trial
2. Close the project with no integration
3. Formally integrate the legal teams

3.6.2 In summary option 3, formal integration, is recommended – this option provides the added expertise and resilience that benefits SDC. It enables access to a broader skills mix to enhance the value that could be derived from the service; it allows flexibility of resource to better cope with peaks and troughs in workload and it facilitates operational efficiency.

3.6.3 The role of Solicitor to the Council was held outside the pilot and has acted as 'client' for the arrangements. The benefits of this approach have been shown during the trial period both through the service monitoring and on those rare occasions where it is critical the SDC can show that it has obtained independent legal advice. In addition the Solicitor has managerial responsibility for Democratic Service, Elections, Licensing and Local Land Charges which are not part of the shared service proposals. The Solicitor is also the Monitoring Officer and whilst it is not essential that the Monitoring Officer be employed by the Authority, he or she should be firmly embedded in the organisation and able to attend all key meetings such as Council, Executive and Leadership Team. This usually requires a high degree of on-site presence and therefore reduces the opportunity for the post holder to take on additional work. It is therefore recommended that this role is not transferred to NYCC but remains at SDC. In consequence it is also recommended that the training roles for which the Solicitor is responsible are retained within the Selby Structure.

4. Legal/Financial Controls and other Policy matters

4.1.1 Legal Issues

4.1.1 A service specification has been developed during the trial and this will be updated and form part of the formal collaboration agreement between SDC and NYCC.

4.1.2 TUPE will apply to SDC staff members. Consultation has commenced with an anticipated implementation date of 1 April 2018, subject to ultimate approval of the Executive and no significant issues arising from the consultation with employees. None of the affected employees are members of a Union but Unison has been informed of the developments as part of our wider engagement on Better Together. Should the arrangements be brought to an end 12 months' notice on either side will be required ending on 31 March of any year. At that stage it is likely that staff undertaking a significant proportion

of Selby work would TUPE transfer back to SDC however this can only be assessed at that time.

4.2 Financial Issues

4.2.1 The current cost to SDC of the legal team is £299,271. A split of those costs is currently being negotiated. In addition to staff costs, some incidental costs will also transfer to NYCC subject to agreement – examples include books and publications, subscriptions, and professional training. It is proposed that the price is agreed each year and subject to an annual uplift from 1 April each year in line with the public sector pay award (National Joint Council rates).

5. Conclusion

5.1 Overall the review concludes that the trial has been successful with a number of objectives achieved. The review does however recognise that challenges around capacity (particularly in planning advice and the increases in certain types of work such as empty homes and the commercial acquisitions and housing development programmes) means that full coverage of advice has not always been possible as planned despite the increased resilience. This will be addressed through the agreement of an additional hourly rate for time spent beyond those contracted and through clear monitoring and forecasting of the need for legal input when projects and programmes are being costed.

5.2 In summary option 3, formal integration, is recommended – this option provides the added expertise and resilience that benefits Selby. It enables access to a broader skills mix to enhance the value that could be derived from the service; it allows flexibility of resource to better cope with peaks and troughs in workload and it facilitates operational efficiency.

6. Background documents

None

Appendices

Appendix A – heads of terms for legal service specification

Appendix B – options appraisal

Contact Details

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Appendix A

Legal Services SLA

Basic service provision

NYCC to provide to SDC a legal service consisting of

5600 hours in 18/19

4200 in 19/20 □

(reflects end of fixed term contract/funding for one post)

Additional hours

(NYCC to confirm what it will charge for additional hours and proposal for when these kick in – immediately after the contracted hours or when these are exceeded by a %)

Income

An initial amount to SDC per annum to be agreed each year as this is built into base budget

Treatment of income above that amount to be agreed.

Included in the service

A comprehensive legal advice and representation service covering the District Council's functions

Legal staff available 9-5 Monday to Thursday and 9-4.30 Friday

Staff to work beyond these hours if required e.g. bid deadlines, evening meetings etc

On-site presence during office hours

Attendance at Planning and Licensing Committee as legal advisor.

Attendance at Scrutiny Committees if required.

Provision of legal advice surgeries on planning, housing and assets/contracts

Cover for the Solicitor to the Council at Executive and Council if required

Management of the Service

A system of allocating work which ensures that matters are allocated to suitably qualified and trained staff

Supervision of legal work/staff

Acknowledgement of instructions within 48 hours of receipt

A substantive response to queries and advice requests within 5 working days or other timeframe agreed with instructing officer

Conflict checks

All matters to be subject to a conflict check

SDC to be notified if transferred staff act on land matters in Selby District or contracts between SDC and NYCC

Monitoring

Solicitor to the Council to attend monthly monitoring meeting

Access to IKEN portal or equivalent reports

Client feedback from service area to be sought on 10% of cases – equal split between 2 directorates

Rating of good or excellent (NYCC to confirm ratings categories) on 90% of feedback

Appendix B

Options Appraisal

Option	Pros	Cons
1. Extend trial	<ul style="list-style-type: none">• Extending the trial would provide an opportunity to further monitor the service and provide additional evidence for the business case.	<ul style="list-style-type: none">• Continued uncertainty for staff (in particular SDC staff) in relation to the future of their roles.• There is a risk of loss of staff commitment as there remains a degree of separation between the two teams.
2. Close the project with no Integration (assuming informal closer working and shared case management system continues)	<ul style="list-style-type: none">• No conflicts of interest	<ul style="list-style-type: none">• Risk to service resilience• Capacity issues• Limited capacity to grow value added service offer• Limited opportunity for staff development/career progression/succession/ planning
3. Formally integrate the Legal teams	<ul style="list-style-type: none">• Provides a sustainable solution and resilience• Provides access to wider legal team to build skills and experience as well as being able to add value.	<ul style="list-style-type: none">• Potential conflicts of interest• Risk that service specification is not flexible enough to meet changing demands