

Causeway Coast and Glens Borough Council

To: Corporate Policy and Resources Committee

For Decision

21st April 2015

Proposal for Provision of Legal Services

Linkage to Corporate Plan	
Strategic Priority	Transition and Transformation
Objective	Successful implementation of the convergence plan
Lead Officer	Stephen McMaw
Cost: (If applicable)	Proposed SLA based on salary of £28,746 and hourly rate for advice from Legal Hub

1.0 Background

- 1.1 The Causeway Coast and Glens Borough Council (the Council) is required to consider the options available for the future provision of Legal Services.
- 1.2 Traditionally, there has been a requirement by each of the four Legacy Councils to procure legal advice for a range of issues associated with Council business. Examples include; land boundary challenges, Council Policy, Industrial Tribunals, procurement advice and employment issues. Some of the legal advice sought has been general, whilst others more specialised in nature. The Legacy Councils have not taken the approach of employing in-house Legal staff.
- 1.3 Costs attributable to Legal Services vary annually, depending on the level of support required in any particular financial year. Typically, across the four Legacy Councils, an indicative figure based on historical information, equates to an accumulated cost in the region of £80k per annum.
- 1.4 The Transfer of Functions to Local Government, particularly in relation to the Planning function, will present substantial additional legal resource challenges. For example, there will be a requirement for legal representation at Planning Committee meetings and the possibility of court proceedings in relation to judicial reviews of planning decisions.

- 1.5 The approach to provision of Legal Services in terms of cost control is very important as it necessitates a balance between having cost effective access to general advice, having access to a greater pool of knowledge when required and then access to specialisms within the legal profession. Specialist legal advice and support tends to be on a less frequent basis, but potentially, very expensive.
- 1.6 At the Corporate Policy and Resources Committee meeting held on 5th March 2015, a report was presented to Elected Members highlighting the high level options available to Council as follows:
- (a) Retaining the current arrangement. The Council will seek advice and support primarily from the private sector. Given the legal advice and support required in relation to the Planning Function, this option is likely to result in a substantial increase in cost.
 - (b) The Council employ and commit to a full time in-house Solicitor. There are merits with this option particularly in relation to access to general legal advice and support, however, it is likely that the breadth of experience will have limitations, bearing in mind the wide range of services the Council delivers and potentially will require legal support on. Again there is a high risk of increased costs due to the requirement for wider knowledge and specialisms.
 - (c) The Council considers a hybrid solution for an initial fixed period with a view to addressing the important balance of in-house knowledge, access to wider experience and reducing the cost and need for specialist legal support.
- 1.7 At the Corporate Policy and Resources Committee meeting, Elected Members were presented with a proposal from Derry and Strabane District Council to develop a Service Level Agreement (SLA) for shared Legal Services with the Causeway Coast and Glens Borough Council. Initial discussions had taken place between Officers in both Councils. The original proposal is attached as Appendix 1. Elected Members agreed to the development of a draft SLA as part of a wider options report. The draft SLA has been completed and is attached as Appendix 2 with the pricing proposal attached as Appendix 3. Fermanagh and Omagh District Council has agreed a similar arrangement with Derry and Strabane District Council.
- 1.8 In terms of the costs associated with the proposed SLA, The embedded Solicitor will be paid at PO1 grade (£28,746). Additional advice from the Hub will be charged at cost price, approximately £70 per hour. Should the Hub require the services of the embedded Solicitor, fees will be charged to the Hub by Causeway Coast and Glens Borough Council for their services.
- 1.9 At the Corporate Policy and Resources Committee meeting held on 5th March 2015, a number of Elected Members enquired as to the approach other Councils were taking. The results of a recent straw poll are detailed in the table below.

1.10 Results of recent Straw Poll involving other Councils

Council	Approach to Provision of Legal Services
Derry and Strabane District Council	In-house Legal Team in place
Newry Mourne and Down District Council	In-house Solicitor transferred from Legacy Council and access to wider legal specialisms
Antrim and Newtownabbey Borough Council	Appointed an in-house Solicitor and access to wider legal specialisms
Mid Ulster District Council	Appointed an in-house Solicitor with specialist advice via arrangement with Belfast City Council/possibly external on occasions
Fermanagh and Omagh District Council	Entering into an SLA arrangement with Derry and Strabane District Council
Mid and East Antrim Borough Council	Have rolled over Legacy Council arrangements for 1 year and procured external Legal support for the Planning function.
Armagh City and District Council	No decision as yet
Belfast City Council	In-house Legal Team in place

2.0 Options

2.1 The following is a breakdown of the three options being considered.

Option	Approach	Advantages	Disadvantages
1	Employ an in-house Solicitor	<ul style="list-style-type: none"> (a) Solicitor on site to assist across all Council services. (b) Opportunity to develop a legal knowledge base through experiences. (c) Provides consistency and relationship building with staff and Elected Members. 	<ul style="list-style-type: none"> (a) The Council will still need to procure expertise from the private sector. (b) The Council will need to commit to an employment contract. (c) May be difficult to source a Solicitor with planning experience.
2	Procure Legal Services from external market	<ul style="list-style-type: none"> (a) No employment commitment. 	<ul style="list-style-type: none"> (a) A Legal Firm may not have the range of expertise to cover Council business.

			<p>(b) The Council may not retain the experiences for future learning.</p> <p>(c) Less opportunity for relationship building with staff and Elected Members.</p> <p>(d) May not be the same degree of interpersonal exposure to personnel providing the advice.</p>
3	Shared Service Approach	<p>(a) Opportunity to embed a Solicitor in the Council without the employment contract commitment.</p> <p>(b) Financial and knowledge benefits from operating as part of a shared service hub.</p> <p>(c) Wider diversity of experience available, reducing the need to avail of the private sector and specialist legal firms.</p> <p>(d) Opportunity to further develop the shared service with other Councils over time.</p>	

4.0 Summary

- 4.1 The Causeway Coast and Glens Borough Council is required to agree an approach to the provision of Legal Services.
- 4.2 Derry and Strabane District Council supported by Causeway Coast and Glens Borough Council staff has proposed the opportunity of a 2-year shared service arrangement in the form of a Service Level Agreement, which involves a junior Solicitor based within Causeway Coast and Glens Borough Council and access to a wider hub, both within Derry and Strabane District Council and Fermanagh and Omagh District Council.
- 4.3 Causeway Coast and Glens Borough Council could consider employing an in-house Solicitor or undertake a procurement exercise for an external service.
- 4.4 Ultimately the best solution is the one that delivers the most effective legal advice at the lowest cost to Council. Option 3 provides an on-site legal resource and access to a wider hub of legal expertise as part of the SLA. This appears to be the best short term approach for the Council. An evaluation of costs can be undertaken after year 1 and a report brought back to Council.

Recommendation

IT IS RECOMMENDED that the Causeway Coast and Glens Borough Council approve a 2-year Service Level Agreement with Derry and Strabane District Council for the provision of Legal Services as detailed in Appendix 2 and Appendix 3.

Appendix 1

Derry City and Strabane District Council

High Level Proposal for Legal Services Arrangement with Causeway Coast and Glens District Council

1. Introduction:

- 1.1 Causeway Coast and Glens District Council has been considering how best to provide for its legal service needs post 31st. March, 2015 – particularly in light of the new powers being transferred to Councils under the Local Government Act (Northern Ireland) 2014. One option that may be considered is a shared services arrangement with Derry City and Strabane District Council.
- 1.2 Shared Legal Services arrangements across councils have been undertaken successfully in several areas, including in Northern Ireland.

2. Proposed arrangement:

- 2.1 In the Local Government Act 1972 there is provision for shared professional services. Section 105 of that act provides that a council may make arrangements with any other council for... the provision by one party to the arrangements for the other of any administrative, professional or technical services.
- 2.2 The proposal would be that Derry City and Strabane District Council provide legal services to Causeway Coast and Glens District Council with an element of legal services being imbedded in the offices of Causeway Coast and Glens District Council. It is envisaged that initially the equivalent of one solicitor at assistant solicitor (PO1 or higher) level would be based full time in the offices of Fermanagh and Omagh District Council.
- 2.3 Further legal services would be provided from a Legal Services hub based at the current Derry City Council offices. Legal staff based in the offices of Causeway Coast and Glens District Council will also provide advices to the Legal hub thereby maximising complimentary skill sets and expertise increasing the benefits to both councils.
- 2.4 Certain specialist legal services would continue to be outsourced in particular in respect of employment and defence litigation where these are currently linked to insurance provision.
- 2.5 All live matters currently with local solicitor firms would continue to be dealt with by those firms and matters would continue to be referred to local solicitors firms where local expertise offers a value added benefit.
- 2.6 The arrangement will be subject to ongoing review by both councils.
- 2.7 Derry City and Strabane District Council would be the employing authority and both councils will enter into an agreement for shared professional services on appropriate terms.

2.8 A similar arrangement is actively being considered by Fermanagh and Omagh District Council meaning a broad range of legal expertise could potentially be based across the three new councils

3. Implications for Causeway Coast and Glens District Council:

This opportunity presents a range of benefits and risks as identified below:

3.1 Benefits:

- Financial savings – legal provision would be supplied at non-commercial rates. In addition there would be no requirement to procure case-management software or access to online legal databases as this has already been done by Derry City and Strabane District Council. This represents a saving of circa £40,000.00.
- Closer working relationship with Derry city and Strabane District Council.
- Opportunities to deliver improvements and efficiencies through collaborative working.
- Opportunity to benefit from shared expertise particularly in areas of corporate governance and planning.
- Provides evidence to local ratepayers of an example of efforts to deliver efficiency savings
- A practical example of collaboration in action and in line with the DoE Minister's stated support for increased collaboration across councils

3.2 Risks:

- Potential impact on local expertise in early stages of the arrangement.
- Additional staffing costs

3.3 Mitigated by:

- Continued use of local solicitors' firms to complement the new service where there is existing expertise.
- Supervision of case load by the Senior Solicitor/Head of Legal Services in Derry and Strabane District Council
- Close liaison arrangements between instructing departments' staff in both authorities
- ensuring effective governance and performance management systems in place around service plan objectives
- drawing on knowledge and learning from other areas who have successfully undertaken similar initiatives

4. Conclusion:

4.1 This arrangement presents a valuable opportunity to allow both councils to increase the effectiveness and expertise of legal service provision and so deliver benefits and drive improvements and efficiencies for both council areas.

Draft
DERRY CITY AND STRABANE DISTRICT COUNCIL
(LEGAL SERVICES DEPARTMENT)

CO-OPERATION AGREEMENT

WITH

Causeway Coast and Glens Borough Council

For Period 1st April, 2015 to 31st March 2017

DERRY CITY AND STRABANE DISTRICT COUNCIL

CO-OPERATION AGREEMENT

SUMMARY

SERVICE PROVIDER	Derry City and Strabane District Council Legal Services Department
SERVICE USER	Causeway Coast and Glens Borough Council
PERIOD	1 st APRIL 2015 - 31 MARCH 2017
SERVICE(S)	LEGAL SERVICES

CO-OPERATION AGREEMENT - PROVISION OF LEGAL SERVICES

PARTIES TO THE AGREEMENT

The parties to this Co-operation Agreement (the 'Agreement') are Causeway Coast and Glens Borough Council, (hereinafter called the "Service User") and Derry City and Strabane District Council (hereinafter called the "Service Provider")

OBJECTIVES OF THE AGREEMENT

This Agreement is entered into with a view to increased co-operation between the Service User and the Service Provider, each a public authority, with a view to ensuring that the public services which each has to perform are provided with a view to achieving objectives which they have in common.

The implementation of this co-operation is governed solely by considerations relating to the public interest and the Legal Services detailed herein will be provided at cost and on a not for profit basis only.

The parties wish to co-operate with each other in the area of legal services in order to foster a closer working relationship, develop and share expertise and make cost savings. This Agreement sets out a range of Legal Services to be delivered by the Service Provider, the expected performance in delivery of such Legal Services and the charging of Legal Services to the Service User.

Whilst this Agreement sets out the full range of services available from the Service Provider, it is acknowledged that the Service User may have or may make arrangements for the provision of any of those services from an alternative source.

DEFINITION OF SERVICES

The Service User requires the provision of a comprehensive and quality level service in respect of both contentious and non-contentious matters and together with general legal advice. Examples are given below, but are not intended to be exhaustive (all such services referred to herein as "the Legal Services").

- (i) Non-contentious Work
 - (b) general contract matters
 - (c) general conveyancing
 - (d) general property matters
 - (e) procurement law
 - (f) general advice

- (ii) Contentious Work
 - (a) defending employer and public liability claims and employment related claims
 - (b) general property and contract litigation (including procurement)
 - (c) contract arbitrations
 - (d) debt proceedings
 - (e) prosecutions

- (iii) Judicial Review(s)

DURATION OF AGREEMENT

This Agreement is deemed to have commenced on 1st April 2015 and will continue until it expires

on 31st March 2017 unless terminated earlier in accordance with the provisions hereof.

SERVICE PROVISION REQUIREMENTS

(i) Instructions to the Service Provider

Responsibility for the referral of casework to the Service Provider lies with the Service User. There shall be no restriction on which officers within the Service User can provide instructions. The Service User will ensure that such instructions have been approved at the appropriate level and that all matters relevant to the instruction have been provided to the Service Provider.

(ii) Staffing

The Service Provider will employ one qualified solicitor (“the imbedded solicitor”) who will be based at the offices of the Service User to provide an imbedded Legal Service. The imbedded solicitor will be responsible for undertaking the routine legal work arising out of this Agreement. The Service User will be responsible for the costs associated with the employment of the imbedded solicitor to include wage costs, laptop, mobile phone, software licenses and solicitor’s practicing certificate. Wage costs will be billed monthly and other disbursements will be billed annually as they arise.

(iii) Legal Hub

In addition to the imbedded solicitor, the Service User will have full access to the range of legal services and expertise offered by the Service Provider’s Legal Hub based primarily at the council offices, Strand Road, Derry. Where Legal Services are provided by the Legal Hub or by other solicitors employed by the Service Provider other than the imbedded solicitor these will be charged at the rates detailed below.

The Service Provider may also ask the imbedded solicitor to undertake work on behalf of the Service Provider or other users of the Service Provider’s services. The Service Provider make sure that this does not negatively impact on the legal service being provided to the Service User. Any work undertaken by the imbedded solicitor will be costed at the rates detailed below and a credit provided to the Service User.

It is envisaged that these sharing arrangements will allow increased co-operation between the Service User and the Service Provider further ensuring that the public services which they have to perform are provided with a view to achieving objectives which they have in common.

(iv) Time Recording and Response Turnaround

The Service Provider will record chargeable time spent on work done for the Service User and charge at the rate shown in Annex 1.

Time shall be recorded in units of 6 minutes. The Service Provider undertakes to keep an accurate record of time spent on behalf of the Service User and to ensure that time is not spent unnecessarily.

For non-routine work the Service Provider will provide to the Service User on request an accurate and clear estimate of the costs in so far as is reasonable practical.

(v) Disbursements

All outside fees and disbursements relating to the Legal Service shall be recharged at cost by the Service Provider to the Service User.

(vi) Counsel

Where appropriate, the Service Provider may recommend the services of Counsel and all fees for Counsel shall be passed (at cost) to the Service User for payment. Counsel should not be appointed without prior approval of the Service User.

(vii) Specialist Advice

Where circumstances arise in which a specialist or agent is required, prior approval of the Service User must be obtained before appointment. All fees for such specialists shall be passed to the Service User for payment.

(viii) Deliverables

The Service User recognises that the Service Provider must be aware of all matters relevant to their instructions in order to provide the Legal Service and the Service User shall accordingly provide full instructions with copies of all relevant supporting documents to the Service Provider. The Service User will ensure that the Service Provider is made aware, as soon as possible, of any change in circumstances affecting the instructions of the Service Provider.

(ix) Performance Expectations and Service User Feedback

The Service Provider will:-

- (i) facilitate meetings if requested to provide summary feedback on all cases and review response times and timescales for the conduct of cases;
- (ii) ensure that requisitioned work is progressed in a timely manner;
- (iii) ensure that any undue delay in the Service Provider's ability to progress work as agreed shall be communicated to the Service User immediately and a plan to progress the work shall be formulated and agreed between the Service Provider and the Service User.

Further meetings may be requested by either party at any time during the term of this Agreement.

In order to make accurate budget forecasts, the Service User requires the Service Provider, if appropriate, to allocate a reserve figure to all cases (where possible) and

advise throughout the case as to fluctuations in this figure.

(x) Fluctuations

Other than by written agreement between the Service Provider and Service User, this Agreement may not be amended during its terms.

(xi) Disputes and Dispute Resolution

Any disputes in respect of provision of the Legal Service that cannot be resolved at the commissioning point of contact shall be communicated to the Director (of the Service User) and the Lead Assurance Officer (of the Service Provider) for resolution.

(x) Client Care

(i) In respect of non-routine matters which will not be undertaken by the imbedded solicitor, the Service Provider will provide the Service User with the following information.

(a) details of the work to be undertaken on behalf of the Service User and

(b) the identity of the person who will have conduct of the work to be carried out

(ii) Complaints arising from conduct or work undertaken by the Service Provider should be addressed to the Lead Assurance Officer of the Service Provider. Complaints will be investigated promptly and a response given to the Service User usually within 7 days and no later than 28 days after the date of complaint. Complaints should be made in writing. In the event that the Service User remains dissatisfied the complaint will be referred to the Chief Executive of the Service Provider for resolution and appropriate action. The Chief Executive will respond usually within 7 days and no later than 28 days after the date of the matter being referred to him.

(iii) The Service Provider will comply with the Solicitors (Client Communication) Practice Regulations 2008 subject to the exceptions contained therein and also with the provisions of The Provision of Services Regulations 2009 in so far as those regulations apply in the context of the service to be provided.

(xi) Payment

The Service User will pay the Service Provider for the Legal Service on presentation of a vat invoice. The preferred method of payment will be by Bankers Automated Clearing System (BACS). The Service Provider will issue an invoice at the completion of a case but may, in respect of ad hoc legal advice, (or in the case of long running transactions/cases) issue an interim invoice, having first consulted with the Service User. All outstanding matters will be invoiced on 31st. March, 2017.

In respect of the payment of specialists the Service Provider will submit to the Service User all invoices as they are received and not withhold these pending the completion

of a case.

TRANSFER & SUB CONTRACTING

The Service Provider is not permitted to transfer or sub-contract the provision of the Legal Service to another provider without the consent of the Service User.

CONFLICTS OF INTEREST

The situation may arise in which the Service Provider is unable to act on behalf of the Service User due to a conflict of interest in their role as legal advisor to a council or government body. In such cases the Service User will instruct another legal advisor to deal with the matter.

TERMINATION

This Agreement may be terminated by either party by giving reasonable notice not shorter than 28 days from the proposed date of termination. Notice will be given in writing to the other party.

CHARGES

Charges for the Legal Service are set out in Appendix 3 hereto.

LIMITATION OF LIABILITY

The Service Provider's liability under this Agreement will be limited to £2,000,000.00.

CONTACT POINTS

The contact points for this Agreement are:-

- (I) In relation to new instructions or any matter which is of an unusual or non-routine nature:
Mr Philip Kingston, Senior Solicitor.

CONTACT POINT – Causeway Coast and Glens Borough COUNCIL

The contact points for this Agreement are:-

- (i) David Jackson, Chief Executive, Causeway Coast and Glens Borough Council
(ii) TBC

SIGNATORIES

Signed this ___ ___ day of _____ 2015

For and on behalf of the Service Provider:

Signed this ___ ___ day of _____ 2015

For and on behalf of the Service User:-

APPENDIX 3

Charging Structure

Imbedded Solicitor	Scale PO1 £28,746 per annum
*Hourly Rate for additional Legal advice from Hub	£70.00

Where the hub makes use of a solicitor based in the Causeway office this is then “charged” to the hub at £70.00.

In any matter where the level of remuneration is that fixed by the court the fee charged will be that directed by the Court.

While it is anticipated that charges for advice work would be based on an hourly rate as detailed above it may be necessary to charge on the basis of scale fees if this is more appropriate.

The Service Provider will maintain a discretion to uplift by 0.5% on land transactions at a value in excess of £250,000.

***Provided that it is agreed that where scale fees or uplifts are charged there shall be no profit element included therein.**