



## Council – 15 October 2018

### Change to Legal Services Provider

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#### Purpose of report

To recommend a change to Part 3 of the constitution to facilitate the transfer of provision of legal advice to the council from LGSS Law to District Law, with the objective of the majority of work transferring from 1/4/19.

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#### 1.0 Background

- 1.1 This council has been benefitting from a shared legal services arrangement with what is now LGSS Law since 2013. This arrangement, which was preceded by a similar arrangement with Northampton Borough Council for a year, has enabled the council to benefit from access to a variety of specialist legal advisors, unlike in the previous in-house arrangement. The arrangement has also saved the council on average £15,000 a year on core legal costs. (It should be noted that there has not been an overall underspend as these savings have been offset against increased legal costs arising from one-off, unpredictable requirements for additional external high level legal advice on matters including employment issues, planning application appeals, examinations and regulatory enforcement cases such as the Judicial Review of the Warth Park Extension).
- 1.2 Whilst the level of legal advice has generally been of good quality, there have been issues in three areas:
- a) Frequent changes in key advisors, with high turnover and use of agency or interim staff in some areas. Continuity of personnel is important for services such as planning and licensing, where knowledge of ENC procedures is also important.
  - b) Occasional failure to supply advice in a timely fashion due to other workload priorities of LGSS staff, with ENC staff having to chase for responses in some cases.
  - c) Poor financial administrative systems. For the three financial years from 2014-15 considerable creditor provision had to be made at year end to reflect the late arrival of invoices for work done. In addition, officers have had to spend considerable time verifying that the work billed to ENC was accurate and in clearing the backlogs of invoices. (Please note that the situation for 2018-19 has improved considerably and invoices are now being received in a timely manner).
- 1.3 As a result of the above, in late 2017, officers started a review of the alternative options for the procurement of legal advice. This coincided with changes at District Law which provided an opportunity to revisit the option of a shared service which had been previously considered in 2012 when the service was first outsourced. District Law is hosted by Kettering Borough Council and currently covers Daventry District Council and Borough Council of Wellingborough. Subsequently, as councillors will be aware, a proposal has been submitted to the Secretary of State for the creation of two new unitary councils to replace the current county/district/borough arrangements. This enhances the appeal of a North Northants based solution to the provision of legal services in the short term.

#### 2.0 Proposed Change

- 2.1 The current contract with LGSS has never been exclusive, and some legal advice has been provided by other providers when either there has been a conflict of interests; where higher levels of specialist expertise (such as QCs) is required; or where the

case has been long-standing in nature. However, it is considered that the current formal delegation under section 101 of the Local Government Act 1972 of our legal services functions (excluding those of the Monitoring Officer) to LGSS does limit this council's ability to enter into a more flexible arrangement under which legal services functions are provided. The aim of the change proposed in paragraph 2.2 below would be to enable the majority of services to pass to District Law by 1<sup>st</sup> April 2019, after the end of the three month notice period required under the current contract with LGSS. It is anticipated that it may be appropriate for some individual long-standing cases to remain with LGSS until these are completed or until the start of any unitary council arrangements.

2.2 Council is therefore recommended to change to the delegation at Part 3 (Responsibility for Functions) Paragraph 2.3 in the Constitution as follows:

*2.3 In accordance with Article 10, Paragraph 10.02 of this constitution, the council has agreed to establish joint arrangements with other local authorities in Northamptonshire to deliver the following specific functions:-*

*(a) licensing administration (with several District and Borough Councils)*

*(b) ICT (with the Borough Council of Wellingborough)*

*(c) Financial Services (with Borough Council of Corby)*

*(d) Payroll Services (with the Borough Council of Corby)*

*(e) Legal Services (with LGSS ~~Local Government Shared Services Law and District Law (Kettering Borough Council)~~)*

*(f) Health and Safety and Business Continuity (with the Borough Councils of Kettering and Corby).*

*and to explore the scope for further joint working.*

2.3 Officers will then start negotiations with LGSS to withdraw from the current contractual arrangement and enter into a more flexible arrangement which allows officers to agree a new shared service arrangement with District Law for the delivery of the majority of legal advice services to this council. It is anticipated that this process will be complete by the end of March 2019.

### **3.0 Equality and Diversity Implications**

3.1 There are no equality and diversity implications directly arising from this report.

### **4.0 Privacy Implications**

4.1 Appropriate provisions to protect the security and management of the transfer of personal data in relation to legal advice to a second legal advisor will be built into the Service Level Agreement with District Law and the revised contractual arrangement with LGSS. This will include the return of files from LGSS where appropriate.

### **5.0 Legal Implications**

5.1 Legal advice will be taken on any revised contractual or service level agreement arrangements that are proposed (from an independent legal advisor).

5.2 As noted above, the current contact for shared services with LGSS is subject to 3 months' notice on either side.

### **6.0 Risk Management**

6.1 There continues to be a risk that any shared legal service will not deliver all the desired benefits. All arrangements will continue to be tightly monitored to reduce this risk.

6.2 The current contract with LGSS makes provision for TUPE of staff where appropriate to any new service provider on termination of the contract. Because of the wide range of legal advice sought via LGSS it is not anticipated that TUPE will apply but this will be investigated fully during the negotiation of any revised contract.

## **7.0 Resource and Financial Implications**

7.1 The current 2018/19 budget for overall legal services is £129,500. The basis of any revised arrangements is to ensure the delivery of the legal shared service remains within the existing budget (excluding the one-off, unpredictable need for specialist external legal as noted in paragraph 1.1 above). It is anticipated that just over half of the overall legal budget will be included in the Service Level Agreement with District Law to cover core legal advice and attendance at committees/panels, with the remainder being reserved for one-off activity which will be commissioned with appropriate providers.

7.2 It is not anticipated that there will be any significant exit costs from the LGSS contract.

## **8.0 Implications for Our Customers**

8.1 There are no direct implications for customers as result of the proposed change which is aimed at ensuring the provision of quality legal advice to the council during the transition between the two providers.

## **9.0 Constitutional Implications**

9.1 This paper proposes a change to Part 3 of the Constitution as outlined in paragraph 2.3

## **10.0 Corporate Outcomes**

10.1 Having access to effective legal services directly contributes to the Corporate Outcomes of Effective Management – legal compliance

## **11.0 Recommendation**

11.1 Council is recommended to :

- a) agree the change to the delegation of its legal service functions (excepting those of Monitoring Officer) as noted in paragraph 2.2

*[Reason: to enable sound governance and to enable the agreement of revised legal services advice services]*

- b) delegate to the Monitoring Officer authority to give notice to terminate the current contract with LGSS Law; and
- c) delegate to the Monitoring Officer, following consultation with the Leader of the Council and the Chairman of Policy and Resources Committee, authority to enter into revised contractual and service level agreements with LGSS Law and District Law.

*[Reason: to facilitate efficient transfer arrangements for legal services]*

<b>Legal</b>	Power: 1972 Local Government Act as amended by subsequent legislation, Localism Act 2011 and related regulations					
	Other considerations: Council Constitution					
<b>Background Papers:</b>						
<b>Person Originating Report:</b> Sharn Matthews, Executive Director and Monitoring Officer <a href="mailto:smatthews@east-northamptonshire.gov.uk">smatthews@east-northamptonshire.gov.uk</a>						
<b>Date: 3 October 2018</b>						
<b>CFO</b> 04/10/18			<b>MO</b> 04/10/18		<b>CX</b> 04/10/18	