

Taunton Deane Borough Council

Executive – 14 January, 2015

Proposed Business Case for Shared Legal Service

Report of the Assistant Chief Executive

(This matter is the responsibility of Executive Councillor Stock-Williams.)

1. Executive Summary

- 1.1 The report provides an opportunity for the Executive to consider the draft business case for establishing a shared legal service between Mendip District Council, Taunton Deane Borough Council and West Somerset Council, taking into account comments received as part of the consultation process, before submitting any recommendations to Full Council.

2. Background

- 2.1 Mendip District Council (MDC), Taunton Deane Borough Council (TDBC) and West Somerset Council (WSC) have been working together to examine the feasibility of sharing legal services. This work flows from the Somerset Shared Services Task and Finish Group which directed that such a project should be potentially undertaken across all Somerset authorities. Following the completion of an outline business case in April 2014, Somerset County Council, Sedgemoor District Council and South Somerset Council decided not to pursue the matter at this time. Nevertheless, MDC, TDBC and WSC agreed to pursue their ambition to forge a constructive partnership to deliver legal services collectively.
- 2.2 A Joint Officer Project Board was established to develop the business case consisting of the Corporate Manager for Governance, Assets and Public Spaces and Monitoring Officer of MDC, the Assistant Chief Executive and Monitoring Officer of TDBC and WSC supported by the Project Lead and Efficiencies and Performance Manager from TDBC and WSC and the Project Lead and Manager Corporate Support for MDC.
- 2.3 The three Councils are building on a successful history of joint working with MDC already providing legal services for WSC, and all three Councils having worked collaboratively in relation to legal service provision in local government governance for several years.
- 2.4 The vision of the Project Board was to create a dedicated service to support public and third sector clients with specialist and cost effective advice.
- 2.5 The key objectives of the project are as follows:
- Deliver a 15% budget saving for TDBC and WSC;
 - Create a flexible resilience model, with a critical mass of expertise;

- Provide enhanced efficiency and effectiveness;
 - Establish an arrangement that will operate for a minimum initial five year period with a review at the end of year four.
- 2.6 The outcome from this work is the production of a business case for a shared legal service based on the model of Mendip to be the host authority and aiming for an implementation date of 1 April 2015 – copy of the business case is attached as Appendix A to this report.
- 2.7 The business case is further supported by a series of detailed appendices which can be made available to Members on request either electronically or on paper.
- 2.8 The business case sets out the various options that were considered before the lead authority model was proposed. In essence this option was seen to be the most appropriate as it would enable the three Councils to set up a shared service relatively swiftly with the minimum of risk and be seen as a first step towards a fully integrated service that could be potentially expanded with further partners at a later date should that be considered beneficial to do by all the parties concerned. By adopting this model at this stage it would also not preclude revisiting other options at some time in the future, such as, for example, the South West Audit Partnership approach.
- 2.9 It is proposed that Mendip should be the host authority for the following reasons:
- a) they have the management capacity to absorb the work required;
 - b) they have significant experience of managing such joint arrangements, for example, managing the WSC legal contract and also undertaking legal work for Somerset County Council;
 - c) their financial requirements are more flexible which enables MDC to bear some upfront management costs whilst ensuring that MDC and WSC can benefit from immediate 15% savings; and
 - d) they are very committed and keen to undertake this role
- 2.10 The host authority model involves current TDBC (including ex-WSC) being transferred under the Transfer of Undertakings and Protection of Employees Regulations to MDC. There will be consultation with all affected staff and UNISON starting during November 2014 and continuing throughout the process. It is anticipated that all existing staff will have the option of a job in the new shared service. A new culture and flexible approach will be required in terms of work undertaken and staff will have the option of working across any of the three council offices sites and/or remotely. TUPE will provide protection for terms and conditions and there are pension protection arrangements in place to cover the Local Government Pensions Scheme arrangements so that individuals should not be affected.
- 2.11 In broad financial terms the business case anticipates that for TDBC the annual cost of providing the legal service will be reduced by up to £37,535 to £212,695, representing a 10 to 15% saving. Correspondingly, the annual cost to WSC will be reduced by £20,113 to £113,977 which represents a 15% saving.

- 2.12 As referred to earlier in the report, MDC have agreed to defray initial savings on the basis that in the business case it is anticipated that there will be some growth in terms of generating additional income and the distribution formula for such additional income will be set to ensure that MDC receives its 15% savings from this income as the first priority. Additional growth beyond this will then be distributed between the three partners based on a formula linked to their respective inputs into the partnership.
- 2.13 This high level financial business case has been signed off by the Section 151 Officers of the three Councils with further due diligence being undertaken in respect of the detailed figures.
- 2.14 In terms of the impact on elected Members the implementation of the business case should enable:
- access to more expertise within the larger shared services team with less outsourcing required;
 - having a more resilient service;
 - the continuity of retaining familiar faces;
 - improved reporting arrangements to monitor performance; and
 - a smooth transition.
- 2.15 In terms of the timetable the key steps are as follows:
- November 2014 – Scrutiny meetings and trade union/staff consultation commences
 - December 2014 – consideration of initial staff consultation responses and Scrutiny comments
 - January 2015 – consideration by Executive/Cabinet of the three Councils
 - February 2015 – consideration of the business case and Inter Authority Agreement at the Full Council meetings of the three Councils
 - April 2015 – subject to Member approval, the shared legal service commences.
- 2.16 The draft business case was considered at the meeting of the West Somerset Scrutiny Committee held on 13 November, 2014 when a range of issues were raised and discussed, a summary of which are set out below:-

Members questioned why Somerset County (SCC), Sedgemoor and South Somerset Councils were happy with their current arrangements and did not, at this stage, wish to join the partnership. The Assistant Chief Executive and Monitoring Officer explained that although the initial intention was for the partnership to be county wide, at this current time SCC, Sedgemoor and South Somerset wanted to see how the proposed Legal Shared Service developed before deciding whether or not to join.

It was recognised that because of the scale of staff in the Legal Service plus timescales and software at SCC there would be additional complexity added. The costs compared with the SCC size ratio would be difficult in terms of a shared service along with the differing areas, such as Social Services, which other authorities did not cover.

Although Taunton Deane used external solicitors, it was believed that these were for individual projects. With a shared service the use of private practice might not be needed so often with more expertise to tap into. This would lead to savings being made.

The ambition would be to go wider along with other authorities once the shared service was up and running.

There was a difference in the way staff operated in the separate authorities. The introduction of a Case Management System would be used to make efficiencies in addition to allocating work more effectively.

A shared service Business Development Manager was in post and would be involved in overseeing the proposals. The template for the proposals would be to deliver more services at less cost with less use of external services, ensuring smarter delivering of services with less travelling along with greater resilience than what was experienced currently.

The role of scrutinising the service would be retained in all three councils with a review of the service in each authority after 4 years.

Flat fees were discussed and it was questioned if profits could be made on charges

At the conclusion of the debate the Committee recommended to Cabinet that the Legal Shared Services Business Case be supported.

- 2.17 The draft business case was considered at the meeting of the Mendip District Council's Scrutiny Board on 24 November, 2014 and also at its Cabinet which met on the same day and the relevant extract from the minutes is set out below:-

Earlier in the evening the Scrutiny Board had considered a report about Shared Legal Services. The purpose of the report was to seek Scrutiny approval in principle to a business case to establish a Shared Legal Services partnership to support Mendip District Council (MDC), West Somerset Council (WSC) and Taunton Deane Borough Council (TDBC).

The report recommended the formation of a three way joint Legal Service and in doing so sought Scrutiny approval for the proposed new operating model, which included the TUPE of staff from WSC and TDBC to MDC. The business case provided the detail of the proposed Shared Legal Service. Following their consideration the Scrutiny Board had resolved the following:

That Scrutiny:-

1. Endorse, in principle the business case to establish a Shared Legal Services Partnership to support MDC, WSC and TDBC.
2. Note that Cabinet would consider the establishment of the Partnership in January 2015, following staff consultation.
3. Note that Council would consider the Inter Authority Agreement relating to the Partnership in February 2015.

4. Note that proposed commencement date of 1 April 2015 for the Partnership.
5. Note the resource implications for the Council in leading an initiative of this nature, particularly for the Manager of Corporate Support Services and Corporate Manager for Governance, Assets and Public Spaces, but also for support functions such as Human Resources and Business Information Systems.
6. Note the intention to develop a second stage business case to develop the Partnership and to explore the feasibility of increasing its breadth to include further Corporate Support Services.

The Cabinet were asked to consider the item at this point as a matter of urgent business in order to report to the other potential partners. After consideration of the report the following resolution was made.

RESOLVED

1. To agree, in principle the business case to establish a Shared Legal Services Partnership to support MDC, WSC and TDBC, noting and agreeing:-
 - a) That this involved a TUPE of staff from WSC and TDBC to MDC
 - b) The financial implications of the business case and the delivery of savings to WSC and TDBC in advance of MDC and the financial contribution this Council would make in kind to deliver this shared service for the benefit of the communities and WSC, TDBC and MDC.
2. Note that Cabinet would make a final decision on the Partnership in January 2015, following staff consultation.

2.18 The matter was also discussed at the meeting of the Corporate Scrutiny Committee held on 20 November, 2014 and a summary of the discussions is set out below:-

- Concern was given in relation to members of any changes in terms and conditions and transfer of employment. There were uncertainties around the service being brought back in house if any problems occurred.
- A report was being directed by APSE (Association for Public Service Excellence) looking into the business case would be provided at the Executive meeting.
- Phase two would consider how a shared legal service would work only following any approval. If approved the workload would be analysed along with the caseload, specialism and expertise.
- Increasing income of the service would be an aspiration.
- Travelling costs were seen as a worry by members. *Employees would be able to work where appropriate at Mendip Taunton or remotely from home which would minimise any travelling costs incurred. Travelling would only be done where necessary.*
- Delivering efficiencies through transactional services was a main aim of the sharing of services. 20% efficiency savings was looking to be achieved through a case management system.
- Recruitment of additional legal specialists were considered. A shared legal service would give more flexibility and allow recruitment where there

are gaps in the service across three authorities. Fees were less than in the private sector.

- The next stage was to look and develop efficiencies in the case management system along with having further dialogue with clients, workforce and IT development.
- No adverse comments had been received from Mendip or West Somerset Unison branches on the shared services proposals.
- It was considered who would pay for any external legal opinion when it would be needed.
- Compulsory training requirements were already inbuilt and a larger inbuilt critical mass would be achieved through this with an increased level of specialist knowledge across the service.
- Discussion took place relating to the case management system along with the online legal library.
- Members commented that access to legal advice was important for members and areas of the council.

The Committee agreed to defer the decision and reconsider the proposed business case for shared legal services following the circulation of the APSE report. A special meeting is to be held on 13 January, 2015 to reconsider the matter before it is considered by the Executive on 14 January, 2015.

- 2.19 Consultations have been undertaken with Unison and the affected staff at the three Councils. Comments received from the Unison Taunton Deane Branch and the Management response is attached at Appendices B and C. A series of one to one and group meetings have been held- and continue to be held – with staff to talk through any issues.
- 2.20 A copy of the report produced by APSE together with the response to a supplementary question about their opinion on the possibility of selling legal services is attached at Appendix D; a management response to this report is attached at Appendix E. Also attached at Appendix G are further comments received from TDBC UNISON received just before the agenda was sent out.
- 2.21 As a further quality check, CIPFA have produced an independent assessment of the Business Case and their report is attached at Appendix F. The summary findings are:-

Our overall conclusion is that the business needs are clearly enumerated in the Business Plan and it lists the benefits that should accrue. All of these benefits are consistent with the stated objectives of the councils. The Business Case is current and comprehensive and there has been examination of sensitivities, risks and assessment of their effect. There has been an assessment of future needs for legal services and potential changes in those needs. Financial details contained in the Business Plan are clear. As a result we consider that the Business Case provides a robust basis for decision making on the creation of a shared legal service.

There are a number of areas where we can see issues requiring further work, such as the lack of clarity about the TDBC workload, the ICT provision, continuing professional development and the attraction of income. There are still decisions for members to confirm (particularly around the acceptance by MDC of the risk of TUPE-ing staff) and the creation of an exit arrangement. However, we do not see these issues as preventing decisions on the shared service being made.

- 2.22 As can be seen from the above, to date the Scrutiny Committee and Board and Cabinet of WSC and MDC respectively have been fully supportive of the proposal. Understandably, given issues raised by TDBC Unison, the Corporate Scrutiny Committee has asked for a further look at the matter at a meeting to be held on 13 January, 2015 and an update on the outcome of these discussions will be provided at the meeting. Individual concerns by certain of the affected staff are also being addressed on an ongoing basis. The independent review by CIPFA has concluded that the Business case provides a robust basis for decision making on the creation of a shared legal service whilst highlighting areas requiring further work. This includes undertaking further due diligence in regard to the detailed figures as a result of which it is likely to be more prudent to anticipate savings for TDBC to be in the region of 10% to 15%. The overall view from a TDBC perspective is that this proposal offers the access to a wider pool of legal expertise and sustains employment opportunities for all existing staff whilst also delivering savings and is therefore recommended to Council for approval.

3. Finance Comments

- 3.1 Further due diligence is currently being undertaken on the finances contained within the draft business case. We are still anticipating that savings of 10-15% will be delivered in the cost of providing the legal service.

4. Legal Comments

- 4.1 If it is agreed to proceed in accordance with the draft business case, proper governance arrangements will be established including an inter authority agreement.

5. Links to Corporate Aims

- 5.1 The legal service is a key support service to ensure that the Council can meet and deliver its Corporate Aims.

6. Environmental and Community Safety Implications

- 6.1 None in respect of this report.

7. Equalities Impact

- 7.1 Members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process.

7.2 An outline equalities impact assessment is one of the supporting appendices to the draft business case.

8. Risk Management Risk Matrix

Description	Likelihood	Impact	Overall
That the proposed shared services model will not deliver a fit for purpose affordable legal service for the council	3	4	12
<i>Preparation of a detailed business case identifying risks and mitigating actions which is supported by all three participating partners</i>	1	4	4

8.1 The scoring of the risks identified in the above table has been based on the scoring matrix. Each risk has been assessed and scored both before the mitigation measures have been actioned and after they have.

9. Partnership Implications

9.1 The proposal provides an exciting opportunity to deliver a key service through a three council partnership with the potential for others to join at some stage.

10. Recommendations

10.1 That Council be **recommended** to adopt the draft business case for a shared legal service – as set out in Appendix A to this report – with an implementation date of 1 April, 2015.

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Appendix A

BUSINESS CASE FOR A SHARED LEGAL SERVICE

TAUNTON DEANE BOROUGH COUNCIL
MENDIP DISTRICT COUNCIL
WEST SOMERSET COUNCIL



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Appendix 1 List of Services in Scope of Legal Shared Services Project

Appendix 2 Client Satisfaction and Identified Need

Appendix 3 Legal Referrals by Partner

Appendix 4 Best Practice

Appendix 5 Draft Data Sharing Protocol

Appendix 6 Draft Service Standards

Appendix 7 Economic Case Legal Budgets

Appendix 8 Draft Project Plan

Appendix 9 Draft Engagement Strategy

Appendix 10 Legal, Procurement and Vires Issues

Appendix 11 Outline Equalities Impact Assessment

Appendix 12 Risk Register

Appendix 13 Outline Benefits Realisation Plan

1. EXECUTIVE SUMMARY

To create a dedicated service to support public and third sector clients with specialist and cost effective advice.

Introduction

Mendip District Council (MDC), Taunton Deane Borough Council (TDBC) and West Somerset Council (WSC) have worked together to examine the feasibility of sharing legal services. This work flows from the Somerset Shared Services Task and Finish Group which directed such a project should be undertaken across all Somerset Councils to explore the feasibility of creating a shared legal service to deliver the following; a 15% saving; a resilient and flexible service; and one which maintained current levels of service.

Following completion of an outline business case Somerset County Council (SCC), Sedgemoor District Council (SDC) and South Somerset District Council (SSDC) decided not to pursue the matter at this time. However, MDC, TDBC and WSC agreed to pursue their ambition to forge a constructive partnership to deliver legal services collectively. The realigned objectives of this tri-Council project are as follows:

- Deliver a 15% budget saving for WSC and TDBC.
- Create a flexible resilience model, with a 'critical mass' of expertise.
- Provide enhanced efficiency and effectiveness.
- Will be constituted for a minimum initial period of five years subject to a review at the end of year 4.

The Councils have established a Project Board to develop this Business Case. The Project Board comprises:

- Donna Nolan, Project Sponsor and Corporate Manager Governance Assets and Public Spaces and Monitoring Officer (MDC).
- Bruce Lang, Project Sponsor and Assistant Chief Executive and Monitoring Officer (TDB and WSC).

- Kim Batchelor, Project Lead and Corporate Transformation Programme Manager (TDBC and WSC).
- Geoff Thompson, Project Lead and Manager Corporate Support (MDC).

The three Councils which have developed this business case are building on a successful history. MDC provides legal services support to WSC; and for more than five years MDC, WSC and TDBC have worked collaboratively in relation to legal service provision and local government governance.

Benefits of the Shared Service

Legal Services is integral to the success of each Council. The service forms part of each organisation's corporate governance structure, but also provides multi-faceted support to ensure the delivery of efficient and effective front line services. Sharing such a vital service provides an opportunity to create a different and unique type of service provision. A service with the ethos of the public sector, but with a much greater business and commercial focus.

The proposed shared service has numerous benefits:

- It provides quality, cost effective legal services.
- It creates a shared services model which has the potential to grow.
- It allows for economies of scale.
- It allows staff to broaden their skills.
- It increases operational efficiency and reduces duplication.
- It consolidates information technology.
- It pools scarce specialist resources.
- It creates additional capacity enabling the reduction of external spend on legal advice/the delivery of an income stream.
- It creates resilience and flexibility.

Thus the Councils are working quickly to develop this shared service in order to maximise the benefits it can achieve. The 'go live' date is anticipated to be April 2015, with full redesign and transformation of the services complete by April 2016. The ambition is to market shared services to other Councils, and public/third sector organisations.

The Councils view this opportunity as the catalyst for developing shared corporate support services in the longer term. The model proposed is therefore flexible and can be expanded to encompass other corporate services, thus realising further efficiencies to protect frontline services.

The Shared Service Model

An Inter Authority and Delegation Agreement will govern the shared service. This will be supplemented by service standards, performance management and a monitoring regime. The host authority will be responsible for the direct management of the service, with decision making delegated to the host authority, and relevant officers. The model will require each authority to commission the service from the lead authority.

The new legal service will be hosted by MDC with TDBC and WSC legal staff transferring to MDC under TUPE Regulations, (other than the Monitoring Officer for TDBC and WSC who will remain employed by WSC and based between WSC and TDBC). MDC will thus be responsible for the structure and the establishment of a new single legal practice.

This is the recommended approach as it provides the most clarity of direction for the new legal practice. It minimises the risks and uncertainty associated with full integration of the shared service, but is sufficiently flexible to allow the service to grow and expand.

Staff Impact

MDC will be responsible for the employment of all staff and provides the new single legal practice and there will be a formal consultation process. This business plan has been shared with Unison at both regional and local levels.

Developing the Model

The development of the model will broadly fall into three stages. The first stage is the approval process which will commence in November 2014 and complete in February 2015: during this stage the governance arrangements; staff consultation process; service design and final operating structure will be finalised; and, appropriate approvals will be obtained by each respective Council to enable the new single legal practice (this is known as the Approval Phase of the project). Following three authority endorsement in February 2015 MDC will lead on all aspects of the Implementation Phase.

The second stage will commence in February 2015 and be ongoing until March 2016: during this phase there will be numerous work streams to redesign the service (this is known as the Implementation Phase of the project). These work streams include:

- Business process – review, design and standardise work practices to ensure they meet client needs and are as cost effective as possible;
- Performance and Service Management – to ensure clients receive a consistently high standard of service and that an innovative approach to problem solving is embedded;
- Information Technology – standardisation and consolidation of casework to support the new business process via a common case management system.
- Stakeholder and Workforce Engagement – stakeholder and people management strategies to support the initiative.

The third phase of the project will include review and appraisal of expansion and/or growth strategies which will include the development of a second business case. This work stream will be undertaken in parallel to the Approval and Implementation Phases of the project.

Financial Savings

The proposed solution delivers the immediate 15% saving required by both TDBC and WSC. MDC will look to improve efficiency and deliver income generation through the growth model to achieve benefit in the longer term, with the anticipated overall savings reaching 14% of the net baseline by the end of year five. Further anticipated benefits will accrue from reductions in the non-business as usual work being absorbed in-house. To successfully deliver this growth model, MDC will be absorbing management costs of £141,000 during the implementation phase and into year 1 together with ongoing support thereafter.

Alternative Options Considered

It is considered that minimal further savings in legal services could be made without considering alternative options. Alternative delivery vehicles to the Host Authority Model have been considered but the alternatives, do not deliver the same outcomes in the required timescale.

Recommendation

- (1) To approve the establishment of a Shared Legal Practice involving MDC, TDBC and WSC with an effective date of 1 April 2015.
- (2) To approve that the Host Authority for the Shared Legal Practice is MDC.

- (3) To approve the TUPE of staff from WSC and TDBC to MDC to facilitate the establishment of the Shared Legal Practice.
- (4) To note that Councils will approve an Inter Authority Agreement with a commencement date of 1 April 2015.

2. BACKGROUND

Introduction

This document proposes arrangements for formally creating a Shared Legal Practice between WSC, TDBC and MDC. It provides an assessment of the financial and non-financial benefits and discusses the implications of delivering such an initiative, including operating model and senior management structure.

The proposal offers significant benefits for all Councils and will ensure the continued provision of cost effective legal services. It will also form a platform for future growth.

The key benefits all authorities have identified, as a result of the proposed Shared Service include:

- Increased capacity and resilience; as pooling legal knowledge and resources across authorities will enable the Shared Service to better cope with peaks and troughs in demand for legal services;
- Improved knowledge and expertise of in-house lawyers, equipping them to deliver work currently outsourced to the private sector in a more efficient manner, thus reducing external spend;
- Developing best practice service delivery across the partnership;
- Finding ways of putting the delivery of legal services on a sustainable long term footing, through adopting commercial disciplines in commissioning and delivering legal services;
- Attracting and keeping the best staff, through greater opportunities for career progression and specialism;
- Reduced overheads, e.g. one service needs fund only one law library and case management system; and the per capita training cost per head is cheaper with volume;
- Delivering efficiency savings, including increased operational efficiency to protect frontline services;
- Creates the opportunity for new income streams;
- Creates a 'blueprint' for shared corporate support services.

The services in and out of scope for the purposes of this business plan are detailed at Appendix 1.

Emergence of the Partnership Arrangement

The Somerset Monitoring Officer Group developed an Outline Business Case for a Shared Legal Service in 2011. Due to conflicting strategic priorities, the draft business case was not approved for implementation but a strong collaborative approach to legal service provision and governance, involving all six Councils evolved. This collaborative approach includes a formal partnership between WSC and MDC.

In late 2013, a draft detailed business case to develop a Shared Legal Service between TDBC, WSC and MDC was developed. The business case was not implemented as in January 2014, the newly established Somerset Shared Services Task and Finish Group directed that a detailed case for a Shared Legal Service involving all Somerset Councils should be developed. In February 2014 a formal Project Board¹ was established and in that same month they developed and endorsed an Outline Business Case confirming all Councils commitment to work together to create a shared legal support service. The Project Board developed a draft business case, but ultimately this was not finalised as the outcomes required by the Somerset Shared Services Task and Finish Group could not be delivered. However, all six Councils continue to work collaboratively and have not precluded the opportunity to join the shared service at a later date. This business case has emerged from initial work undertaken by TDBC, WSC and MDC in 2013 and the cross County business case.

The importance of Legal Services

Councils are statutory bodies and can only act within the powers given to them by Parliament. It is vital that a Council operates within the law and that procedures are followed. A key responsibility of Legal Services is therefore to advise the Council on the legality of its proposals, policies and practices.

Councils are often required to make decisions that have to balance conflicting interests. There are serious consequences for a Council if it gets the balance wrong or if it takes action without having the legal power, for example, having to defend applications for judicial review, orders that it pays another parties' costs, harm being suffered by vulnerable individuals and damage to its reputation. Good quality legal advice means that a Council can discharge its functions with the confidence that potential legal issues have been identified and that any risks will be properly considered in the decisions that it makes.

The legal service teams across all authorities therefore provide public sector legal advice, support and representation on matters as diverse as planning, housing,

¹ Bruce Lang – Assistant Chief Executive and Monitoring Officer TDBC and WSC, Tonya Meers – Head and Legal and Democratic Services and Monitoring Officer TDBC, Melanie Wellman – Group Manager and Monitoring Officer SDC, Ian Clarke – Solicitor to the Council and Assistant Director and Monitoring Officer, SSDC, Donna Nolan – Corporate Manager and Monitoring Officer, MDC, Honor Clarke – County Solicitor SCC.

homelessness, environmental health, contracts, procurement, property, licensing, employment, electoral law, enforcement/prosecutions, Freedom of Information and Data Protection, human resources and regeneration matters. Legal Officers provide advocacy services in the civil and criminal courts, inquiries and tribunals, training and guidance on new legislation and debt recovery services. At all authorities the legal services staff advise the Council, Cabinet/Executive and Scrutiny Committees and all other formally constituted committees.

Future issues for Legal Services

Over the past 24 months the focus of the demands on legal service provision has been changing, and with the inexorable pressure on local authorities this will continue, for example:

- Legal Services has historically generated income to balance their budgets each year. Most of that income has come from drafting section 106 agreements and some has come from the legal fees third parties are charged for leases, agreements, deeds etc. In the recently uncertain economic climate the property, the commercial and retail sectors have been adversely affected and thus, levels of income have been reduced.
- There has been more demand for legal support to enable the Council to be more robust and creative in dealing with procurement and contractual matters to ensure that it does business on the terms that are most advantageous to the Council.
- There has been a need for specialist advice on partnering arrangements with the public, private and other sectors as other organisations have become more innovative in their approach and willing to enter into such.
- There has been a need to explore more radical options for delivering Council services and to consider which functions it will no longer exercise, accordingly there has been greater need for corporate governance advice. In particular, there has been more detailed written advice on reports to Council, Cabinet/ Executive and support to the Scrutiny committees.
- There has been more demand for legal advice on human resource matters as services strive to be more efficient or if services have to be downsized.
- There has been difficulty in recruiting professional staff.
- Trading has a sharper focus for in-house services; capacity freed up or gained from using freelance staff is being used to provide legal services to other public bodies.

- There have been capacity and resilience issues for some legal teams.
- There has been a need for a greater focus on complex growth project work to ensure sustainability and continuity for the Councils

Business Options – Legal Services

All Councils are taking a corporate approach to service transition on the context of reduced central government funding. As part of this approach a number of models have been explored and evaluated.

- ***Do nothing.*** Legal services are discretionary, although as a statutory body the importance of legal support on the legality of decision, policies and practices is paramount. Legal Services have a key role in delivering corporate priorities at all Councils and in supporting the services most critical to communities.

The status quo is not financially sustainable, nor is it appropriate in the context of changing legislation and service demands.

- ***Outsource.*** Legal Services have historically been outsourced by both MDC and WSC. Outsourcing to the private sector did not deliver either value for money or flexibility resulting in both Councils adopting alternative delivery options.
- ***Shared Services.*** Sharing services between local authorities is a common approach in the current age of austerity and spending reductions. Authorities working together can increase efficiency and value for money by removing unnecessary overheads and duplication in service delivery. A successful shared service programme can deliver both cashable and non-cashable efficiency gains. This can lead to a win-win situation as combining existing expertise and experience can also raise standards and the quality of service delivery as Councils look to do more with less.

Without strong services the costs of the legal services will continue to rise; and the increasing need for innovative legal support to Councils will not be delivered. The opportunity to share services to release cashable savings, whilst redesigning the service provides not only an opportunity to sustain, but to enforce legal services and to support the successful future of all three Councils. As a result a shared legal practice is the preferred option.

3. THE VISION FOR SHARING SERVICES

Vision

The Project Board have developed the vision for the Practice.

To create a dedicated service to support public and third sector clients with specialist and cost effective advice.

There is a commitment to creating a legal practice which is business focused; responsible and flexible, ensuring that it supports frontline services so that they can do their job more efficiently and effectively. This vision is underpinned by the design principles and success factors.

The ability to create a service which can grow, to create an income stream, by providing legal services to other local authorities and organisations; and expand to deliver further efficiencies, by developing shared back office services is at the core of the vision of the Project.

Designing the Shared Service

Preliminary work has been undertaken to define the strategic direction for the shared service; this is a blueprint and more detailed plans will need to be developed during the Approval Phase (November 2014 – February 2015) to achieve the desired outcomes.

Demand Management Assumptions and Level of Service Provision

In order to design a new service and map out the potential benefits of sharing, current service provision and customer satisfaction information has been used as a baseline. This information is at Appendix 2.

During the Approval and Implementation Phases, a framework will be developed to review all services to make improvements. The services will be looked at systematically in a review programme, redesigning and improving each area to deliver efficiency and customer satisfaction excellence.

Design Principles

A set of design principles have been created, which support the transition to a shared service and ensure the design aligns with the vision for a shared legal practice.

The key design principles are:

Processes	Standardise processes unless they need to be different
	Maximum time on professional role
	Greater efficiency of process – faster – better for customers – easier - simpler
	Eradicate duplication across Councils
	Optimal use of resource and performance regulated by Business Practice Manager
Organisation	Customer focused culture with expert professionals operating as business partners.
	A resilient flexible and scalable business model
	Share assets (ICT, buildings, resources, management)
	Use internal talent to redesign the business, taking the best from each other to capitalise on strengths and reduce weaknesses
	The Monitoring Officer role will be retained by each Council
	Sustainable, cost effective and efficient shared services which are highly competitive and that can provide savings/economies of scale
	Innovative employer brand that attracts the right skills
Technology and Information	Standard case management platform will be developed and used
	Access to timely, accurate information and advice, when and where needed
Location	Flexible on the location that the service is delivered from, which will be informed by the customer need
	Utilise new ways of working to elevate any geographic constraints e.g. introduction of a case management system, conference and video calls

	Provides jobs for local people
Business Growth	Operating model is able to adapt to meet the changing needs of the Councils
	Needs to be business focussed and attractive to others
	Create a competitive advantage to develop income generation opportunities
	Will be a precedent shared service model and capable of expansion to encompass other corporate support service functions

Success Criteria

A range of consultation and information gathering has been undertaken to understand business requirements for the shared services at Appendix 3. This has provided invaluable information about current service levels, volumes of work and the profiles of referrals to legal across the Councils.

The information gathered to date has been used to influence the design principles of the new service, and the future structure of the service. Further detailed stakeholder consultation will be undertaken during the approval and implementation phases of the project to seek to improve customer service, create Service Level Agreements and improve marketability of the service.

Project Critical Success Factors

A number of project critical success factors have been created as part of the service design principle development.

Critical success factor	Priority	Definition
Anticipate customer and member needs	1	Customer focused shared service which highlights an understanding of cultural needs. It has a flexible and proactive approach towards its customers to realise customer satisfaction; and has a 'can do' attitude is at the core.
Resilience	1	Continuously improving and creating a sustainable business with new revenue streams.

Mandatory first request/ refusal	1	To prevent fragmentation and duplication of provision, the shared service should be the first port of call for all legal needs for all Councils. Alternative provision should only be agreed where requests cannot be met.
Flexible	1	Provides a flexible model where partner authorities can join at a later date.
Delivers savings	1	Delivers cashable savings for TDBC and WSC.
Ease of delivery	1	Is not complex in terms of implementation.
Delivers low cost services with quality	1	Sustainable, cost effective and efficient shared services which are competitive and that can provide savings/economics of scale.
Provide a platform for continuous improvement	2	A flexible and scalable platform to support services by leveraging innovations in order to enhance market knowledge and self-development to gain competitive advantage (i.e. use of measurable KPI's, case management).
Investing in people and skills	2	The importance of investing in people and skills to support sustainable business.
Revenue Streams	2	Develop revenue streams by looking for innovative ways to grow and be on the competitive edge by planning/reviewing market trends.
Governance and compliance	2	Robust, but flexible approach.
Provide platform for delivering new services	2	The need to expand the current project.
Multi-channel	3	Utilises ICT to deliver legal service innovatively.

4. THE OPTIONS FOR DELIVERY

Delivery Vehicle Options

As part of the development of the Business Case, the Project Board has examined the various business delivery vehicle options available to a shared service project. These options include administrative models, contractual models and corporate models.

The Options

Administrative Models

Part 6 of the Local Government Act 1972 makes provision for the way in which local authorities may arrange for the discharge of their functions. All authorities may discharge their functions through a committee, a sub-committee, through another authority, through joint committees and through officers, including officers loaned by another authority. In certain cases functions may be discharged through a joint board.

Putting an Officer at the Disposal of another Authority

This deals with arrangements under S113 Local Government Act 1972 and enables the placing of staff of local authorities at the disposal of other local authorities. In order to utilise this option, an authority simply needs to enter into an agreement with another for the purpose of placing one or more of their staff at the disposal of the other for the purpose of carrying out their functions on such terms as the authorities may agree.

Delegation of a function under the Lead Authority Model

An authority can delegate a whole function using S19 or S101 of the Local Government Act 1972 delegating it from one authority to another which has the effect of passing the responsibility to the second authority to deliver the function of the first Authority. Such arrangements can and usually do involve the transfer of staff either by secondment or TUPE as appropriate. This is generally known as the Host or Lead Authority Model

Establishing a Joint Committee

Authorities are able to discharge their functions through joint committees and such committees have a power to co-opt to their membership. Expenses of a joint committee are defrayed by local authorities in such proportions as they may agree. If situated in two or more districts or areas then, if the parties cannot agree, the apportionment is determined by an arbitrator appointed by the Secretary of State.

The constitution of a Joint Committee is generally contained in a formal agreement entered into by the authorities concerned. The agreement commonly prescribes the number of members of the Joint Committee, the number of members which each authority may appoint, the terms of office, and other related matters. The Joint Committee has no corporate status and it cannot therefore hold property or enter into contracts. Any property which it uses vests in one of the constituent authorities which holds it in trust for the rest. Alternatively, the constituent authorities may hold the property jointly. Similarly any contracts required to be entered into to achieve the objectives of the Joint Committee will have to be entered into by one or more of the Partner authorities directly, with if necessary, the formal agreement creating the Joint Committee making provision of sharing the benefit and burden of such contracts. A member of the local authority to a Joint Committee of which the authority forms part ceases to be a member of that committee when he ceases to be a member of the authority.

Contractual Models

If a service is provided by one Authority to another on a purely contractual basis it should in accordance with European Treaty principles be open to competitive tender process, with outside providers being given the opportunity to bid for the right to provide the service. (NB This does not apply in the case of a delegation of a function or agency arrangement – see below). If a service is provided by a company set up by a local authority which carries out the principle part of its activities with that authority (or groups of authorities), is under the control of those authorities and has no private sector ownership, it benefits from the Teckal exemption and there is no requirement of a procurement process. This exemption would be lost if the company traded more widely to the extent that its principle activity was no longer providing a service to its controlling authorities.

Agency Arrangements and Goods and Services

These types of arrangements are permitted by the Local Authorities (Goods and Services) Act 1970 amongst others, and are useful where an authority provides services to another authority.

An authority may discharge any of its functions by another authority under what is commonly called an agency arrangement. The statutory responsibility for the function remains with the authority to whom the function is statutorily allocated. Arrangements may be revoked on reasonable notice.

Corporate Models

Company (for profit)

This model can be purchased “off the shelf” with standard articles of agreement etc drafted, usually for a small fee. As a separate entity, a company can own property, employ people, act as director or secretary of another company, enter into contracts, sue and be sued. Each shareholder (which can be a Local Authority) will hold an amount of shares in the company (note a body can be a shareholder) and that is the extent of their liability. This has the effect that the shareholder's personal assets are protected in the event of the company's insolvency, but money invested in the company will be lost.

There are obligations on limited companies to produce and provide to Companies House a set amount of information. A private limited company's disclosure requirements are lighter, but for this reason its shares may not be offered to the general public.

A board of directors will need to be established, along with associated voting rights and through this body the company will be managed – a minimum of one director is required to set up a company. Anybody can be a director, subject to a few exceptions. Only £1 share capital is needed to start up a private limited company.

Company limited by guarantee (non profit)

This model can be purchased “off the shelf” with standard articles of agreement etc drafted, usually for a small fee. Under section 5 of the Companies Act 2006, a company limited by guarantee must not have share capital when being set up.

The company has members who are guarantors instead of shareholders – these would therefore need to be agreed and appointed with this in mind and would be the decision makers for the company. Limitation of liability takes the form of a guarantee from its members to pay a nominal sum in the event of the company being wound up while they are a member or within one year of their ceasing to be a member. The amount of money that is guaranteed can be as little as £1 and will be stated within the constitution of the company

There are particularly useful for non-profit organisations that require corporate status. The Company is able to make profits which are retained and used for the purposes of the guarantee company. Care must be taken when entering into contracts however as the benefit of limited liability may be needed to protect its Board of Trustees and its members. It is able to own property in its own name. It provides the vehicle for a democratic structure where participants are required to adhere to the strict laws and regulations governing limited companies generally.

Local Authority Controlled Companies (general)

In both companies limited by shares and companies limited by guarantee where they are wholly owned by an authority (or group of authorities) they are described as controlled companies and are subject to the following rules beyond those of a standard company.

- a) It cannot pay a Director who is a member of a local authority any more than they are entitled to receive by way of attendance allowance as Councillor.
- b) The Company must provide the local authority's auditor such information about the running of the company as they require to audit the local authority.
- c) The company must disclose any information about how it is run as may reasonably be required by any member of a local authority shareholder.
- d) The Company must make available for public inspection minutes of its general meetings for a period of 4 years.
- e) The company must (currently) have its auditors approved by the Audit Commission prior to appointment.

Following consideration of the possible vehicles, the options shortlisted by the Project Board to undertake the shared service enterprise were either to retain the status quo, a company setup, a Joint Committee, a Lead Authority, or full outsourcing.

The Shortlisted Options

Keeping the Status Quo

It was considered that this is not an option for the Councils and delivering services in a different way and sharing them with others was now considered the only option to make further savings within legal services.

Limited Company

This option considered the creation of a company wholly owned by the partner Councils. This provides the benefits of a separate organisation to focus on delivering the legal shared services.

An approach is to set up a 'Teckal' company that just trades with the in scope local authorities and is still under their control. A 'Teckal' company has to do 90% of its business with the owning local authorities and have an intention to remain primarily for that purpose. This percentage will imminently change to 80%.

There are legislative constraints on the 'Teckal' company model which would restrict the ability of the shared service to trade and raise revenue from selling services to other organisations. A 'Teckal' company would need to win work from the public sector and others via an OJEU process and could tender and win up to 20% of external work (both public and private sector). Any additional work won over and above this would require a separate trading company.

A company would need to bid for work and go through a full procurement process, except for the in scope Councils. Staff would be required to transfer to the company through TUPE arrangements and there could be implications for each authority's pension funds. The company would incur overheads associated with running an independent business, such as company registration, accounts, external audit and reporting.

Joint Committee

The creation of a Joint Committee allows the in scope services to be shared between the partner authorities.

Joint Committees are popular vehicles for initiating shared services in local government. A key reason for this is that they are democratically controlled bodies, requiring in their makeup that a least two-thirds of the committee's membership be elected Members. This overcomes the risk of Members feeling their control of a service is diminished under collaboration.

The key elements of a Joint Committee are:

- They are joint bodies set up, by agreement, to discharge functions and carry out activities jointly on behalf of local authorities and their executives.
- All principal authorities, parish and community councils have power to set them up.
- Current legislation allows Councils (Joint Committee) to provide services to other local authorities /public bodies outside of an OJEU process depending on demonstrating that there is genuine co-operation.
- They are attractive to local authorities because their constitutional arrangements are familiar in local government.

However:

- This model is scalable but only within the public sector and cannot provide incidental services to the private sector, although establishing a jointly owned company to trade would resolve this issue.
- They cannot employ any staff directly and usually delegate employer responsibilities to one or the other of the partner authorities. This can make cultural change slower, although this eliminates the need to TUPE staff to a new entity and minimises any pension funding issues.

Lead Authority

The Lead Authority Model is also a popular vehicle for initiating shared services in local government. It provides clarity as the service is delivered by one authority to another under delegated agreements. The arrangements are generally governed by an Inter Authority Agreement (IAA), which is set up for a defined purpose. The services are delivered and managed within the decision making framework of the Lead Authority, which would be underpinned by comprehensive delegation agreements and service level agreements. Staff from other authorities can be TUPE to the lead authority which will make cultural change less challenging.

Full outsourcing

Full outsourcing is not currently considered as a viable way of delivering legal support services. This method does not fully support the vision for the project as the Councils do wish to have the ability to retain savings made and reinvest in services.

Although early savings could be achieved through outsourcing it is felt that this type of arrangement may struggle to deliver future savings and any savings could be retained by the provider rather than the Councils. The Project Board feels that there is some risk being tied into this type of contract during the current financial climate. Other models do not preclude the Councils from outsourcing individual services later.

Evaluation of business delivery vehicle options

These business delivery vehicle options each have distinct benefits and have been appraised. Each option was evaluated to take into account overall vision, cost and quality, ease of gaining external work, governance effectiveness, resilience, flexibility, local employment opportunities and speed of delivering benefits potential.

Best Practice Elsewhere

In addition, a desktop exercise has been undertaken of other partnerships where sharing of Legal Services has been considered, or is in place. These models have been assessed and taken into account in developing the shared service delivery vehicle. The best practice research is at Appendix 4.

Recommended Business Delivery Vehicle

On the basis of the research and evaluation process the Lead Authority Model is recommended.

The Project Board have also considered the options for transferring staff to the Lead Authority.

Transfer Options to the Lead Authority Model

Under a Section 113 of the Local Government Act 1972, Councils can second staff to a Lead Authority. However, the Project Board have discounted this option as it does not provide clarity of direction. In particular such an approach will not deliver the requisite cultural change as contracts of the employees remain with the respective Council; is only suitable in the short term; and can only operate on an individual basis as each employee has the option as to whether to transfer.

Accordingly, it is recommended that the staff from WSC and TDBC are TUPE'd to MDC. This process will require a formal process of consultation, but it will provide clarity for staff and protection for employees in terms of job security, pension and contractual terms of employment. As it provides a single employer model, the cultural changes required to deliver the practice will be easier to achieve. The TUPE model is also preferred by Unison for the reasons outlined.

5. PREFERRED OPTION - LEAD AUTHORITY – GOVERNANCE AND AGREEMENT

There have been detailed discussions amongst the Project Board regarding the operating arrangements to ensure minimum risk of under covering unanticipated obstacles during the initial stages of the project to reduce the risk of the shared service failing. These discussions will continue during the Approval Phase so as to ensure the governance arrangements are robust, and all potential risks are mitigated. The all-embracing Inter Authority Agreement addressing legal, financial and personnel matters will be ratified by all parties prior to the go-live date of 1 April 2015.

The overriding principle is that partner Councils will share costs, expenses and savings involved in the sharing of services fairly, transparently and on an agreed basis. Open book arrangements will be enshrined within the Inter Authority Agreement.

Legal Powers

The proposal would be effected by a delegation from TDBC and WSC of its legal service to MDC under Section 101 of the Local Government Act 1972 and the relevant executive function regulations. The TDBC and WSC staff would transfer to MDC's employment and all staff in the new single legal practice will be made available to TDBC and WSC under Section 113 of the Local Government Act 1972, which will enable all partner Councils to delegate decisions to them as if they were their own staff

The delegation will need to be agreed by all Councils Cabinets and full Councils. The basis on which MDC will exercise the delegation will then be captured and agreed in an Inter Authority Agreement. It is necessary to have a robust legal agreement to set out the Councils respective obligations and responsibilities. In this respect the arrangements will cover similar ground to a commercial agreement. However, the arrangement is based on co-operation between the three Councils for their mutual benefit, recognising the shared aims of the three Councils to ensure quality cost effective legal support: aims which they can each achieve more readily by working together.

Core Terms

This section of the proposal sets out the key terms of the arrangements.

- MDC are not charging TDBC and WSC for their senior management costs associated with this proposal either in terms of implementation or ongoing costs. Costs in the sum of £55K being projected cost of time appropriate to the single legal service by the Head of Partnership and Business Development Officer have been provided 'in kind' by MDC in the first year

and £25K per annum thereafter. MDC has taken this approach to facilitate the development of this shared support service, and the wider benefit such an approach will bring to the residents and tax payers of Somerset but will be seeking to recoup this “pump-priming” expenditure before the sharing mechanism comes into operation.

- TDBC and WSC will commit to a five year contract which will deliver a minimum of a 15% saving over their current costs.
- Payment will be made monthly in arrears; such payments to be equal to one twelfth of their annual fixed price.
- All the legal work required by MDC, TDBC and WSC will be offered to the shared legal team: MDC, TDBC and WSC will only agree to an alternative provider when their request cannot be met.
- In respect of any redundancy costs, howsoever arising, which may arise immediately prior to or during the life of this legal shared service then the following shall apply:
 - Prior to the inception of the legal shared service and during its first year of operation then costs of any redundancy will fall to the previously employing Council.
 - During years 2 and 3 of the arrangement any such costs will be shared in accordance with the profit sharing mechanism.
 - During years 4 and 5 any redundancy costs will be MDC’s liability.
- The five year contract will be subject to annual adjustments in respect of inflation effected through the application of an agreed Office of National Statistics index and taking due cognisance of any LGA awards as appropriate.
- The agreement will run for 5 years and be subject to a formal review in April 2019.

Overheads and set up costs

- An agreed element of overhead cost, including a reduction over time to reflect efficiency benefits, is included in the forecasts.
- Due to the incomplete nature of the historical data in respect of the number of productive hours required to deliver the Business as Usual (BAU) service it is not possible to introduce a charging regime based on hours at the start of the arrangement. However, this will be a vital element moving forwards and the

following actions will be put in place to effect a change to payment for productive hours by the end of year three:

- Introduction of the case management system in April to June 2015.
 - Collection of data on all new cases with effect from July 2015.
 - Assessment and validation of all monitoring information from the case management system July 2015 to December 2016.
 - Agreement of a parallel year's trading based on productive hours January 2017 to March 2017.
 - Parallel years productive hours / fixed price trading April 2017 to March 2018.
 - Trading based on productive hours only April 2018 to March 2020.
 - Review of entire trading arrangement April to December 2019.
 - Agreement of follow-on arrangement January 2020 to March 2020.
- Set up costs in respect of ICT have been included in the cost base and defrayed over the five year life of the agreement.
 - MDC absorbed costs including branding, start-up training, marketing, external legal support and overheads will be recovered along with their 15% share prior to the sharing mechanism coming into force in any one year.

Pension

It is assumed TDBC and WSC employees who TUPE transfer to Mendip are part of the pension scheme and thus these arrangements will not change.

Billing

- The budget year will run from April to March.
- The costs of delivering the basic Business as Usual (BAU) service, including the agreed overhead and inflation, will be paid for in equal monthly instalments April 2015 to March 2018 against a fixed price. The service delivery risk in terms available productive hours will rest with MDC during this period.
- For the period April 2018 to March 2020 the annual budget process the required productive hours volume will be fixed for that year. The purpose of this is to ensure that MDC is not exposed through sudden downward changes in demand to costs that it would not otherwise bear.
- The costs of delivering the basic Business as Usual (BAU) service, including the agreed overhead and inflation, will be paid for in equal monthly

instalments April 2018 to March 2020 on an agreed fixed price basis but with a safeguard included in respect of productive hours required to deliver the BAU service.

- Detailed reporting of the hours worked for WSC and TDBC will be provided electronically by MDC each quarter.
- The shared legal team management will seek to fill any short-term capacity availability by selling the time to other local authorities/public bodies/clients. The risk for securing this work lies with MDC but early indications suggest that the modest aspirations should be achievable.

Time required over the agreed contract productive hours for the period April 2018 to March 2020

- All hours required in excess of the agreed monthly hours will be charged at the rate of £65 per hour post the go-live date; such rate to be increased annually in accordance with the agreed inflationary arrangements. This rate reflects current market rate for charges between local authorities and will also be used to fill capacity gaps, where possible. The rate reflects the costs of hiring, redundancy, downtime, training and overheads for these staff. It is anticipated that the principal source of this work will be in outsourced legal work which is currently being undertaken by third party firms.
- Any surplus arising or savings delivered will be available for distribution as described below.

The Distribution Formula

- If, after taking into account all the applicable costs expended in running the practice (and a reasonable agreed amount for “working capital” purposes); and a reasonable agreed amount to reflect the fee generating work already undertaken by MDC as a result of the fact they have an established third party Council client;
- A reasonable agreed amount to reflect the fact that on implementation MDC did not benefit from the same percentage of savings as TDBC and WSC savings.
- Recompense for the ‘in kind’ costs contributed by MDC in that budget year.
- Costs contributed by MDC in that budget year.

- [The basis of the sharing mechanism will be that MDC will recover their 15% saving against the base budget and their “absorbed” costs before the sharing mechanism comes into operation.. Once the shared legal service has delivered this saving all future savings, in any one year, shall be shared in accordance with the ratio between the three authorities in respect of their base year gross cost.] That ratio will be MDC 44%: TDBC 36%: WSC 20%)
- The distributions formula will form part of the Inter Authorities agreement.

Client relationships and reporting

- Service Level Agreements (SLA’s) will be entered into for the key service areas. Such SLA’s will set out areas of legal work required, resources needed to deliver services, skills and experience relevant for the service, client liaison, reporting arrangements and agreed KPIs for measuring performance.
- There will be a Business Services Manager who will ensure clarity of reporting and communication lines.
- The Business Services Manager will hold regular meetings with the department directors and senior management of TDBC and WSC and will discuss with them, inter alia, the likely demands for time over the forthcoming weeks and months.
- To recognise the “shared services” nature of the arrangements and the importance of strong governance, there will be quarterly meeting with TDBC and WSC’s designated Contract Manager to review operational efficiency, statistics, KPIs, trends and projections and to enable the development of the service to meet the Councils aims.
- The Head of Partnership will produce for each Council an annual report on the activities of the shared service over the previous year, including an account of financial matters and explaining the new plans and activities for the following year.

Internal Dispute Resolution

Any dispute will, in the first instance, be referred to the relevant Business Services Manager to resolve, in liaison with the other Council. In the event that this can not be resolved it will be referred to the Shared Services Business Development Manager and if it still could not be resolved, referred to the Head of Partnership. If the Head of Partnership is unable to resolve the dispute then it would be referred to the Joint Committee for a decision.

If a dispute about the Agreement cannot be resolved through the processes of the negotiation the matter would be referred to mediation.

Scrutiny and Audit

The existing scrutiny and audit arrangements for each Council in respect of oversight of legal service provision would remain. The relevant Committees of each Council responsible for Scrutiny and Audit would have the right to inspect any documents relating to the Inter Authorities Agreement and have Head of Partnership or deputies answer any questions they raise.

All Councils are public authorities as defined by the Freedom of Information Act Legislation and therefore information relating to the Inter Authorities Agreement may be the subject of an information request.

Trading Issues

The new shared service will, in due course, be marketed to other Councils in accordance with the legal ability to do so.

A profit could be made on services provided to other organisations by the shared service, but with some restrictions. The Local Authorities (Goods and Services) Act 1970 permits any local authority to charge another local authority (or Public Body under that Act), as they see fit. For services provided to others that are not local authorities no profit is permitted to be made under Section 93 of the Local Government Act 2003.

The Councils could set up a company to service organisations which do not fall under the 1970 Act and any other proceeding legislation and secondly shared services employees to that company or have service level agreements. Profits could then be generated.

MDC may wish for another Council to join the shared service. Such an arrangement would need to be developed at the relevant time by the Councils.

The shared service may be able to sell other councils and/or public bodies outside of a procurement process providing it was structured to comply with the 'Hamburg Waste Case' and subsequent case law. However the relevant EU case law would need to be considered carefully to ensure that such an arrangement would be permissible within the EU procurement directives.

These models are scalable but with local authorities and other parts of the public sector including the third sector if there was demand for third party work MDC could create a company at a later date.

6. OPERATING MODEL

Business Model

The host authority will be MDC which will manage legal staff from across all Councils. Staff will be located at the Council that is most appropriate to their casework: this approach retains flexibility to respond to local circumstances and requirements. However, it still permits the full benefits of economies of scale, effective process design and re-design, career development and cost reduction.

Fee earning staff will work in up to three areas of law to provide a balance between general and specialist advice. A target of 1100 chargeable hours will be set for all fee earning staff (pro rata as appropriate) with the aim of driving up productivity over time through the introduction of a case management system, agile working and improved business processes.

Underpinning the new approach to management is a focus on the key strategic goal of expanding as a shared service, promoting income generation and creating stakeholder value. Thus the service re-design will include changes to the overall business model, not just efficiency savings.

As part of the approval and implementation phases, complete service reviews will be undertaken to release efficiency, reduce duplication and deliver cash savings but with the aim of maintaining quality.

The overall business model is likely to change in the following key ways:

- Counsel would only be used for legal tasks requiring the most significant and/or specialised legal knowledge and experience; or higher rights of audience.
- The shared service lawyers would consolidate services, standardise processes, and develop a delivery model which, whilst retaining face to face contact, is supported by a strong IT solution, and a web based interface.
- Legal services which frequently re-occur or that are high volume may be considered for outsourcing to a lower cost service provider.

Operational Model - Retained Functions

The Monitoring Officer at TDBC and WSC will remain employed by TDBC, and will not form part of the single legal practice. This Monitoring Officer will be the 'intelligent client' function to manage the relationship with the new service as a commissioner of Legal Services. This role will be critical to ensuring TDBC/WSC benefit from an efficient, high performance and value for money services. The Monitoring Officer for

TDBC / WSC will also assist internal client departments to adjust to the new arrangement and provide a strategic 'gate-keeper' function, ensuring that the processes for instructing lawyers under the new Shared Service are operating effectively and challenging the need for using external providers.

MDC will keep its own Monitoring Officer and Solicitor to the Council; this postholder will be responsible for the Head of Partnership. The Head of Professional Services will be Solicitor to the Council for TDBC. The Head of Partnership and Head of Professional Services will jointly discharge the role of Solicitor to the Council for WSC

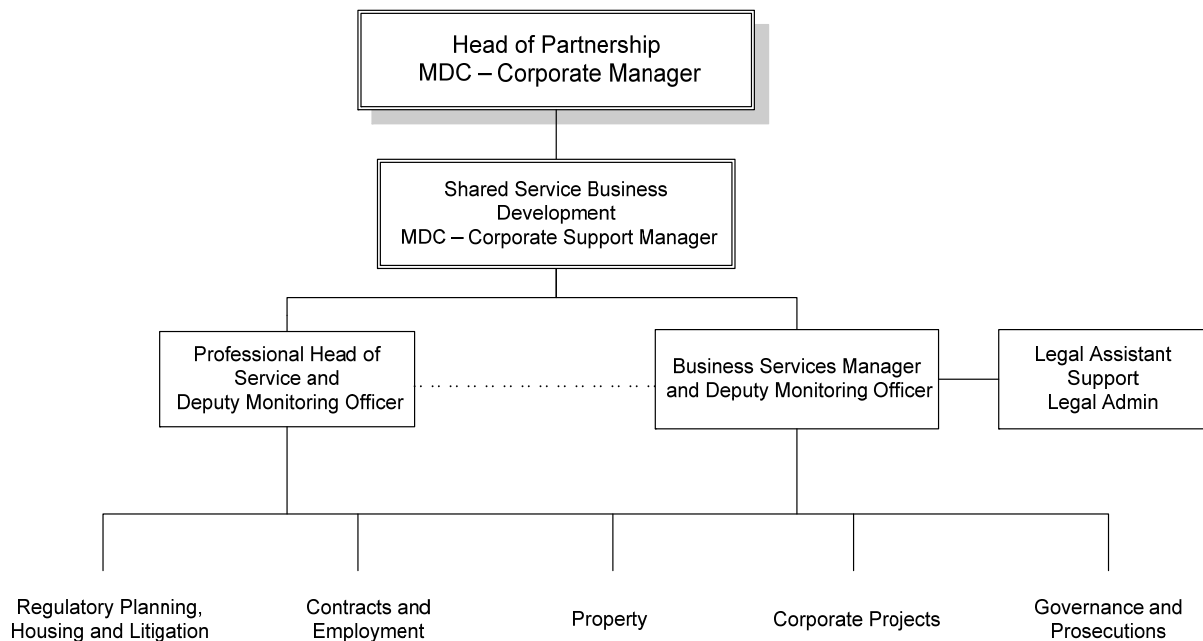
Operational Model - Organisational Structure

A number of operating structures have been explored and detailed discussions have been undertaken to agree the operating arrangements with the Chief Executives of TDBC/WSC and MDC. The recommended option has been jointly agreed by the Chief Executives as the one which delivers the following strategic drivers:

- Has the flexibility to adjust to changing resource demands.
- Recognises the need for locally based resource, but not to the detriment of the partnership.
- Provides a mechanism to ensure external legal procurement is efficient.
- Provides a mechanism to ensure accountability of case progression and performance.
- Delivers consistent service standards and operating procedures across the partnership.
- Is accessible for clients and Members.
- Delivers opportunities for joint learning and reduced cross authority duplication.
- Promotes inter-authority operational and relationship trust.
- Deliver both cash and non-cashable savings.
- Delivers opportunities for expansion.
- Maximises opportunities to internalise work that is often procured externally.
- Retains appropriate managerial and strategic capacity.

- Develops practice support management capacity to release fee earning capacity.
- Is not complex in terms of implementation.
- Redefines vacant posts and re-focuses existing fee earning staff to provide a service fit for future purpose.

The recommended Organisation Structure is:



This is believed to be the most appropriate level of family tree for this document detailing the range of services to be provided along with its basic operational structure.

There are also two distinct changes from existing structures. Firstly, in accordance with emerging best practice, the role of a Business Services Manager will be introduced. These roles, which are common in private practice, are responsible for essential areas of practice which ensure delivery of high quality and cost effective service. They also ensure that lawyers can focus on case work rather than management functions.

The arrangements for the management structure is described below.

Operational Model – Management

The Head of Partnership

- Is legally qualified.

- Has no day to day managerial involvement in the operation of the service which releases more time to focus on providing strategic direction.
- Leads, directs and implements opportunities to share Legal Services and other corporate support services, with organisations within in or outside Somerset to secure income and/or increase resilience and knowledge.
- Accountable for the role of Solicitor to the Council and Monitoring Officer for MDC, including holding responsibility for the related statutory duties.
- Leads integrated service delivery in managing the model and driving change.
- Creates an environment where new ideas can be nourished, nurtured and implemented.
- Leads the delivery of high quality, efficient and effective legal services across the partnership to meet customer and community needs and respective Council's Corporate Plan aims.

Shared Service Business Development Manager

- Accountable to the Head of Partnership both in terms of Legal Services and also the integration of other Corporate Support Services to the model.
- Improves service quality and achieves value for money by managing resources across the partnership in the most effective and efficient manner.
- Identifies and develops opportunities to expand and commercialise the model.
- Develops business development plans for the Shared Service based on opportunities, market intelligence and knowledge.
- As the Shared Service grows, will plan and deliver project implementation strategies, including staffing.
- Supports the Head of Partnership in ensuring the authorities and their senior Management Teams receive legal advice from the partnership which are proactive, commercial and solutions driven.

Business Services Manager

- Is legally qualified.
- Will be responsible for all the facets of the day to day management of the Legal Shared Service practice including the outward facing customer/client management function.
- Will report to the Shared Service Business Development Manager under the direction of the Head of Partnership as necessary.
- Will provide the public facing side of the service and spend much of their time with clients after the initial Implementation Phase, during which focus of the role will be operational. They will be the 'face' of the service on a day to day basis.
- Will determine the work allocation throughout the team, including;
 - Provision of updates to the Project Board and the MO TDBC and WSC.
 - Preparation of annual business plan.
 - Reviewing new work requests across the partnership and allocating cases to the most appropriate available lawyer (could include requesting that the Professional Head of Service provide the advice).
 - Liaising with the Professional Head of Service and the lawyers to ensure work is allocated according to development plans and career development aspirations of each lawyer.
 - Ensuring that work allocation is prioritised fairly and in line with the partnership service standards.
- Will be responsible for resource planning;
 - Monitoring the availability of resources and upcoming demands to identify future shortfalls or over capacity of resources.
 - Requesting that Shared Services Business Development Manager consider adjusting resource levels accordingly.
- Will be responsible for performance management and reporting;
 - Monitoring the progress of cases to ensure that they are progressed in a timely manner and in line with client requirements and the service standards.
 - Producing performance data and analysis on the operation of the service covering the satisfaction with the quality of advice received, timeliness of

- the response, financial performance, volume of output (e.g. chargeable hours and cases closed) and other targets.
 - Ensuring that performance levels of the service are high and in line with the service standards.
 - Providing feedback to the lawyers on fee earner performance in the areas of: delivery of timely advice, chargeable hours completed, customer interaction skills and other matters as required.
 - Identifying and progressing approaches to further improve service and process performance.
- Will carry out business planning in consultation with Shared Service Business Development Manager
- Will be responsible for all aspects of budget management, including;
 - Commissioning all external legal advice and managing the budgets for all external advice.
 - Ensuring that arrangements are in place for procuring value for money external advice.
 - Producing quarterly 'statements' of the 'credit' or 'debit' position of each partner Authority.
- Will be responsible for managing the 'client interface';
 - Ensuring that regular client review meetings are held.
 - Acting as the 'gate keeper' for new work requests to ensure that new cases are 'validated' and all required information is available prior to commencement of work by the fee earning staff.
- Will be responsible for ensuring that all processes are developed, reviewed and remain effective.
- Will be responsible for the case management system, including;
 - Implementing and managing the case management system to ensure accurate records and data are maintained.
- Will be responsible for the following aspects of line management;
 - Managing the consultant lawyers and internal lawyers in consultation in consultation with the Professional Head of Service.
- Will discharge the duties of Deputy Monitoring Officer for any partner Council, which will include assisting with the undertaking of investigations of any alleged breach of the Code of Conduct by District Members and Parish

Councillors.

- Must be able to undertake no less than two areas of law within the single legal practice.

Head of Professional Services

- Ensures the authorities and their senior Management Teams receive legal advice from the partnership which is proactive, commercial and solutions driven.
- Undertakes at the more senior level legal casework (including instructing Counsel where appropriate) for the Councils and their contractual third parties including:
 - Conveyancing and Property
 - Housing
 - Planning
 - Litigation
 - Electoral Law
 - Contracts and Procurement
 - Acting as advocate for the Councils in the Magistrate and County Courts and at Tribunals
 - Producing reports to the Councils and attending committee meetings to provide advice as Solicitor to the Councils
 - Advising Members and officers on probity issues.
- Supports the Shared Services Business Development Manager in creating opportunities to share Legal Services and other corporate support services, with organisations in or outside Somerset to secure income and/or increase resilience and knowledge. Work closely with the Business Services Manager in this regard.
- Works closely with the Business Services Manager to ensure the smooth running of the Shared Service.
- Is proactive in recognising the potential impact of future legislation and best practices to provide advice (sometimes in concert with other officers) which will assist the Councils to decide policies and strategies which ensure that they function efficiently and effectively.
- Supervises the case work of all lawyers within the single legal practice.
- Must be able to undertake no less than three areas of law within the single legal practice.

- Monitoring changes in statute and case law which will impact upon the conduct of the three Council's business and advise client departments as necessary including advising on relevant changes in procedures
- Attending committees and panels as required, to provide advice as to the legality and likely consequences of their decision-making process and on issues of probity arising during the meeting.
- Will discharge the duties of Deputy Monitoring Officer for any partner Council, which will include assisting with the undertaking of investigations of any alleged breach of the Code of Conduct by District Members and Parish Councillors.

Operational Model - Benefits

The single Legal Service is designed to address the issues and drivers outlined above, and to deliver the following outcomes:

For Members:

- Improved delivery of the Legal Services which supports the full range of local authority activities; I
- Efficiency savings with mitigating measures to manage any impact on the quality of level of legal provision; E
- Improved local knowledge by access to a wider range of expertise; I
- Risk in terms of corporate governance and ethical standards is adequately managed. R

For clients:

- More visibility of case progress and service performance allowing for risks to be better managed;
- A more rapid delivery of advice and case work through enhanced processes and monitoring;
- Opportunities to be more 'self sufficient' with appropriate back up and

training;

- Access to a wider, and more specialist, group of advisors;
- Clear service standards and mechanisms in place to monitor service delivery;
- More advice will come from local authority employed lawyers with greater knowledge of cultures, constitutions, governance and priorities;
- Improved opportunities to give feedback so as to ensure the service meets requirements.

For Legal Services staff

- Wider opportunities to progress or into management roles;
- Maximising the time spent on legal work with less time on management or administration;
- Reduction in reactive work and increase in proactive work through improved practice management arrangements;
- Introduction of the Business Services Manager role to improve the working arrangements with clients;
- Reduction in time following up incomplete instructions;
- Greater access to support from others within a wider team and increased resilience;
- More systematic support for coaching, supervision, monitoring of workloads and support for professional development.

Operational Model – Finance

The Business Services Manager will be responsible for managing the day to day finances of the shared service. It is anticipated the model will be as follows:

- The budgets for legal advice will be transferred to the host authority on an annual basis. This budget will equate to an agreed number of legal services hours;
- When work is requested from a client it is allocated to the most appropriate available resource using the case management system. The choice of most appropriate resource will be dependent on a range of factors including

availability, location, expertise, skills, and development needs;

- On a quarterly basis a statement will be produced and invoices produced at the end of the year to reconcile budgets to keep administration to a minimum;
- The Business Services Manager will monitor the overall budget to ensure that work requests are in line with available funding and alert the Business Development Manager immediately if it appears that budgets could be overspent;
- Income generated by providing services outside of the partnership will be distributed in accordance with the distribution formula detailed in the inter authority agreement. (see also page 25).
- Where business outside the scope of the defined Shared Service is received the Business Services Manager will explore the possibility of absorbing all or part of this work within the Shared Service in the first instance: where this is feasible the agreed hourly rate will apply.
- Councils will be expected not to reduce the resources available and the following year's budget will be agreed in the October prior to the commencement of a budget year. Where resources reducing results in redundancy, the Council making the service delivery change will pay all the redundancy costs and other costs accruing as a result of this.
- All external advice will be commissioned by the Business Services Manager using the procurement arrangements put in place. Clients will not commission work direct.

Operational Model - Client Review Mechanisms

To ensure that the service benefits are delivered client review mechanisms will be established. The Business Services Manager will ensure that regular client review meetings are held (at least bimonthly) to identify upcoming work requirements, provide feedback to clients on how effectively they are supporting legal in providing timely instructions, for clients to comment on areas they feel need improving and learn any lessons from recent cases.

In addition a standardised customer feedback questionnaire will be devised and sent to each client quarterly. Finally, the Business Services Manager will provide performance information from the case management system covering turn round times, case progress, chargeable hours for each client, customer satisfaction data and other key measures in line with the Service Standards. Overall performance will be on an annual basis to each authority.

Operational Model - Data Sharing Protocol and Conflicts of Interest Policy

The Data Sharing Agreement in draft form is at Appendix 5. This, along with other key documents such as the Conflicts of Interest Policy will be incorporated in to the Inter Authority Agreement which is due to be signed immediately prior to 1 April 2015.

The Data Sharing Agreement is important to define the scope of sharing, ensuring that relevant issues have been considered and record the respective obligations of the Councils.

The Conflicts of Interest Policy will be vital to ensure lawyers have clear guidance how to deal with potential of real conflicts of interest; given they will be working for more than one Council.

Operational Model - Service Standards

The Service Standards will prove a set of performance criteria against which the shared service can be measured by internal and external review. The Business Services Manager will monitor performance against the Service Standards, reporting to the Business Development Manager and the Monitoring Officer at TDBC and WSC.

Service Standards will be approved and finalised prior to the Implementation Phase. The Draft Service Standards are at Appendix 6.

Operational Model - Performance Management

Performance management of the new shared service will be managed and monitored by the Business Services Manager. This will add value to the service by managing the customer relationship and monitoring the shared service's performance, ensuring it meets the needs of its clients. During the implementation stage of this project a performance matrix and final Service Level Agreements will be developed with customers. The Business Services Manager will then monitor and manage these on their behalf.

The Business Services Manager will also lead the re-engineering of the new service, undertaking reviews to bring the services together, improving performance, creating capacity and identifying savings. This role will also be key in developing and growing the business, by offering the service to others to support income generation and/or the development of further shared support services in liaison with the Business Development Manager.

Operational Model - Lexcel

Law Society Lexcel accreditation is the legal quality standard. Accredited legal practices are certified by the Law Society as offering higher standards of client care and practice management. To achieve Lexcel accreditation, legal practices undertake a rigorous testing and inspection process to ensure that they have the very best in client care, file and data management and complaints handling.

As part of the implementation phase the Project Board will consider if the shared service should seek to achieve Lexcel accreditation.

Operational Model - Staff and Team Development

During the Approval and Implementation Phases staff development will be crucial, most especially for new skills to allow for work to be brought in-house. In addition it is assumed that there will be investment in team building, problem solving workshops and other similar activities involving the whole team.

7. BENEFITS AND OUTCOME

7.1 ECONOMIC CASE

The economic case has been built around the postulated growth model whilst recognising the imperatives at TDBC and WSC to deliver immediate 15% savings. The detailed financial case can be found at Appendix 7 and the following table provides a synopsis:

Financial Summary

	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
	£K	£K	£K	£K	£K	£K
Staff	393.3	417.3	417.3	417.3	417.3	417.3
Operating Costs	290.6	257.9	246.7	241.3	238.7	237.3
Gross Total	683.9	675.2	664.0	658.6	656.0	654.6
Income	139.1	144.2	149.2	154.2	159.2	164.2
Net Total	544.8	531.0	514.8	504.4	496.8	490.4
Net Saving		13.8	30.0	40.4	48.0	54.4
		2.5 %	5.5 %	7.4%	8.8%	10.0%
Non- BAU expenditure after efficiency	210.0	199.5	189.0	178.5	168.0	157.5
Average Total expenditure (inc Non-BAU)	754.8	730.5	703.8	682.9	664.8	647.9
Overall projected saving		24.3	51.0	71.9	90.0	106.9
		3.2%	6.8%	9.5%	11.9%	14.2%

The following assumptions have been made in the construction of the business case:

- Staffing levels will actually increase to facilitate the delivery of the longer term aims of the project. This has been achieved by the prudent redeployment of

the income generated from the WSC work.

- Travel and Subsistence has been increased by 50% to enable agile service delivery.
- Targeted savings have been assumed in the use of external consultants with reductions of 50%, 70% and 80% over the first three years as the team enhances its skills base.
- A reduction of £2,800 by combing the legal libraries.
- Increased efficiency from enhanced and streamlined working practices and the introduction of a case management system will deliver an improved income stream. This capacity will be charged out at market rates and it is anticipated that savings of £20,000, £25,000 and £30,000 can be achieved over the initial three year period and rising to £40,000 by year 5.
- In addition it is anticipated that the team will be able to reduce the need to commercial lawyers for the Non-Business as Usual (Non-BAU) work as the team upskills and diversifies. Projected savings arising from this work stream are £10,500 in year one rising to £52,500 in year 5.
- The savings arising from increased charging out and absorption of the Non-BAU work have been assumed to take place at a very modest rate of growth (eg 5% pa for Non-BAU absorption).
- No allowance has been made for any redundancy costs howsoever arising.

Taking the above factors into account, whilst also seeking to ensure the longer term viability and growth of the service, the following immediate savings are delivered to satisfy the requirements of WSC and TDBC:

- Reducing the base cost to the service required by WSC by 15% to an annual cost of £113,977; a saving of £20,113 per annum. This has been built into the model at Appendix 7.
- Reducing the base cost to the service required by TDBC by 15% to an annual cost of £212,695; a saving of £37,534 per annum. This has been built into the model at Appendix 7.

Thus MDC will not be expecting to achieve significant savings in the first instance but will be reliant on the growth model to deliver benefits and expect to capitalise on this through the Sharing Formula.

In order to ensure the success of the project MDC will be injecting significant resource into the project. These are set out in the following table:

MDC absorbed costs

	Year 1	Year 2 onwards
Senior Management	55.0	25.0
Backfill of lawyer for implementation phase	20.0	Nil
Initial training costs	10.0	Nil
Marketing Costs	10.0	Nil
Branding Costs	10.0	Nil
Overheads for TUPE staff (50%) apportionment)	36.4	36.4
Total MDC absorbed costs	141.4	61.4

Savings

Target savings of 15% are critical to TDBC and WSC.

Savings are also vitally important to MDC but MDC have balanced this against the need for longer term sustainability and believe that their aims are best served by forming the partnership, stabilising and building the skills base of the team, increasing efficiency through the introduction of commercial practices and then seeking to recoup their investment through the sharing mechanism by means of a combination of the increased efficiency and new work streams.

Reducing External Solicitor Expenditure

As part of the business case development all Councils examined their external legal expenditure (both solicitor and barrister) for the past three financial years. It was judged that no barrister-related expenditure (or at least only a very small proportion) could feasibly be delivered in-house at this point in time. However, with respect to external solicitor expenditure, it was identified a number of areas of work that had been outsourced to external solicitors but which could be delivered in-house by the Shared Service. This would be possible by increasing efficiency and pooling knowledge and expertise.

A shared legal service would result in a conservative 10% increase in efficiency and productivity delivered by reengineering service delivery in two main ways:

- a) Critical mass, more effective staff deployment and pooled expertise. Bringing the three teams together would improve overall critical mass and allow staff to be deployed more flexibly to cope with peaks and troughs in work volumes. Pooling staff would mean it is likely that the work previously outsourced to external solicitors could be undertaken in-house.
- b) Improved Practice Management: There are a known number of practice management initiatives that could improve overall efficiency including the more effective use of case management systems, work flows/process mapping and developing the optimum team structure. Such initiatives require practice management resource, which is more feasible where resources are pooled. The Business Practice Manager is thus critical.

Quantifiable Benefits

Selling Legal Services

While it is intended that any increase in staff capacity would first be used to reduce the partners' external legal spend, any remaining capacity would be applied to providing legal services to other public sector clients. The intention is for the Shared Services to become a supplier of legal services to other public sector organisations. The current external charge-out rates across partner Councils are very competitive and generally cheaper than most private practice firms can offer.

Efficiency and productivity savings would allow the Shared Service's lawyers to deliver some of the work the partners currently outsource to external solicitor firms, which is not specialist in nature. Efficiency savings would also generate additional staff capacity sufficient to generate income from additional fees.

In addition the reduction in the Non-Business as usual expenditure is also achieved through increased efficiency throughout the team dealing in house work which is usually passed to commercial lawyers. This capability should increase over time as the 'specialist' across within the combined teams are strengthened.

Taking advantage of Economies of Scale by jointly Procuring Legal and Ancillary Services

The Shared Service will significantly increase economies of scale as set out above.

With respect to the joint procurement of external legal services from barristers and solicitors, a solicitor's panel would be established. Savings could be achieved by jointly procuring barristers services and additional cashable savings in the form of free legal training from external suppliers are possible as a result of a more co-ordinated approach under a shared legal service.

Rationalisation of Accommodation Remote Working

MDC and TDBC already have an office rationalisation and multi public service/customer access transformation programme in place. This project will therefore link with these projects and, where feasible, deliver further savings to both authorities.

Shared Services Costs

Each Council will be responsible for the cost of any investment required for the number of staff currently employed to provide legal services.

ICT costs are a key issue, there will be implementation costs with any project of this nature and invest to save funding will have to be made available to ensure transformation of service delivery will progress. It is anticipated that £40k capital investment will be required to integrate all partners onto a single Case Management and Time Recording system. These costs have been included within the operating costs detailed above and are recovered through that charge over the five year life of the project including an appropriate local authority charge for interest to reflect the “up-front” nature of the investment. There will also be an increase in revenue costs of approximately £6,000 per annum as a result of these new systems. There will also be investment costs associated with providing a secure connection between all the sites but at this point these costs are unqualified.

Programme Implementation Costs

Resources to review services and implement change will also need to be taken into account. It is anticipated that with a collaborative approach amongst all partners, including MDC temporarily backfilling a senior lawyer, so that the post holder can become the implementation lead, the programme implementation costs can be dealt with within existing budget. The cost of backfilling the senior lawyer, providing the necessary change management training packages, marketing and branding costs will be in the region of £50,000 but MDC will support this ‘in kind’ to facilitate the delivery of the project.

7.2 THE ADDED VALUE CASE

Developing and Deploying Specialist Practitioners

Pooling resources will better enable the shared service to assess the viability of employing specialist legal practitioners to deliver more complex (and more costly) work in-house and generate more income from providing services to other public sector

clients, for example commercial work.

Improving the Working Environment and Opportunities for Staff

There are a range of ways in which the Shared Service would improve the working environment and opportunities for staff, including:

- **Increased specialism:** by combining to form a larger Legal Service, legal staff will become more specialised in a particular area of the law, allowing them to undertake more complex and interesting work, thereby increasing their job satisfaction.
- **Resilience:** increased critical mass would mean that workloads could be shared in the event of staff absences or vacancies, thereby reducing the increased stress levels that can often result from a smaller team having to absorb their colleagues' work at such times.
- **Less Outsourcing:** a more specialised team would mean that the more challenging and interesting work could be retained in-house rather than outsourced to external solicitor firms.
- **More legal/less administrative work:** improved efficiencies and reduced administrative burdens, would mean that legal staff would do more legal and less repetitive work or administrative tasks thereby increasing job satisfaction.
- **Career progression:** with a larger team there would be more opportunity for career progression thereby keeping staff motivated and helping overcome recruitment difficulties.

7.3 BUSINESS DEVELOPMENT

The Opportunity to Grow

It is recognised by the Project Board that this shared service business case is a platform which can be developed to deliver ongoing cost reductions and service improvements.

The Local Government economy is worth £144bn each year. While there are many authorities undertaking shared service activities sharing services across organisations is complex to achieve and many do not have the expertise, capacity or willingness to do it themselves. The implementation of this project thus creates an opportunity for growth within the local government sector.

However, it is not just Councils that are keen to share services. There is a range of

shared service activity in Further and Higher Education, the blue light sector and health who have all been seen to outsource or share support services in order to protect their core activities.

The third sector is another potential market with many charities falling under Local Authorities (Goods and Services) Act 1970 definition of a public body. There are thus clear opportunities to be explored to grow the Shared Service.

Whilst there are complex legal and staffing issues associated with developing a trading arm, these issues can be resolved to enable other organisations to use the new shared legal services.

The Opportunity to Expand

There are also opportunities to expand the scope of this shared service to deliver further cashable efficiencies. The scope of this model could be expanded to include services such as HR; Democratic Services; Procurement; Property Assets; Health and Safety.

No income assumptions have been made in this Business Case for business growth and new clients. Neither have any capital investment assumptions, which would be essential to support the growth of the shared service, been included in this Business Case.

8. TIMESCALES AND IMPLEMENTATION

Overview of Implementation Approach and Timetable

An outline project plan is at Appendix 8. The timetable thereafter is expected to be:

- Councils to agree to endorse this business case in February 2015.
- Project Board agree name and branding for the shared service in March 2015.
- Councils agree Inter-Authority and Delegation Agreement in February 2015.
- Revised delegations agreed to allow officers from one Council to take decisions on behalf of the other to be approved by each Council by February 2015.
- The single legal service will be brought together from 1 April 2015 facilitated by TUPE transfer of staff.
- Market research analysis complete by 1 April 2015.
- Reviews commence to maximise potential savings from 1 April 2015.
- Savings as a result of this business case delivered by 1 April 2015.
- Phase 2 Business Case and Marketing Plan complete by June 2015.

Shared Service Naming and Branding

A name and brand for the new shared service will be developed in the implementation phase.

The name and brand will support the achievement of the wider programme objectives, in particular to engage staff in working for the new shared service and marketing the service to potential new customers.

A clear identity for the shared service will help those staff working for it to feel that they are moving to something new and create a sense of momentum and purpose for the change. Use of the brand in all communications and engagement with staff in all Councils throughout the transition and implementation phases will help support the required culture change.

Use of the brand will also help position the service with internal customers in all

Councils and make it clear that they are now receiving their support services from a different entity.

Communications and Engagement

A draft Communications and Engagement Strategy has been developed to commence the transition of a culture change process for all partner Councils existing legal services to the new shared service. The draft Communications and Engagement Strategy is at Appendix 9.

The main objectives of the Communications and Engagement Strategy are to:

- Ensure that all key stakeholders understand the rationale, benefits and plans for the new shared service.
- Support the positive engagement of staff moving to the new shared service, ensuring that they have all the information that they need.
- Ensure that all clients of the shared service know how to access and use it.
- Support the culture change needed for a successful service transformation.
- Ensure that residents and other external stakeholders understand the reasons for developing a shared service and perceive it positively.
- Ensure that there is consistent messaging and that project communications are integrated with all Councils wider communications messages and activities.

Communications activities will include:

- Information in all Councils regular internal communications channels such as employee newsletters and manager's briefings.
- Developing specific communications channels, such as an email bulletin to 'in scope' staff.
- Meetings and events for 'in scope' staff.
- Targeted communications for elected Members, trade unions and external service.

A Marketing Plan will also be prepared as part of the Implementation Phase.

Legal Procurement and Vires Analysis

A legal, procurement and vires analysis has been scoped by the Project Board and is at Appendix 10. No risks as a result have been identified.

Equality Impact Analysis

An Equality Impact Analysis (EIA) has been scoped by the Project Board is at Appendix 11. At this stage it profiles the staff which are currently in scope of this project and where requisite information has been provided. The EIA will be further developed and reviewed at each key stage to ensure that the project is developed in full recognition of the diverse needs, circumstances, and concerns of the people who will be affected by it, both employees and communities across the local authority areas.

Programme Risks

A Risk Register, which has been completed by South West Audit Partnership, is attached to this Business Case in Appendix 12. It highlights the major risks attached to this Project. These risks will be mitigated through a range of actions and controls which will continue to be put in place throughout the implementation phase.

Benefits Realisation

A draft Benefits Realisation Plan is attached at Appendix 13. Immediately following the decision to proceed to the Implementation Phase, the plan will be finalised. The financial benefits are, for the most part, predicated on efficiency savings. Leadership and focus would be required to ensure that the cultural change needed across the Councils in order to ensure those savings does occur.

A robust methodology for measuring the benefits of the new service will include regular reviews of the cost, quantity and quality of the services received will be required.

Appendices

Appendix 1 List of Services in Scope of Legal Shared Services Project

Appendix 2 Client Satisfaction and Identified Needs

Appendix 3 Legal Referrals by Partner

Appendix 4 Best Practice

Appendix 5 Draft Data Sharing Protocol

Appendix 6 Draft Service Standards
Appendix 7 Economic Case Legal Budgets
Appendix 8 Draft Project Plan
Appendix 9 Draft Engagement Strategy
Appendix 10 Legal, Procurement and Vires Issues
Appendix 11 Outline Equalities Impact Assessment
Appendix 12 Risk Register
Appendix 13 Outline Benefits Realisation Plan

Appendix B

Business Case for A Shared Legal Service

Comments from UNISON Taunton Deane Branch

1. Taunton Deane UNISON has commissioned APSE (Association for Public Service Excellence) to review the Business Case. Owing to the compressed timescale, it is unlikely that the APSE conclusions will be available in time for this meeting of Corporate Scrutiny; however they should be available for subsequent stages of the Council's decision-making process.
2. In the interim, discussions have been held with affected staff and UNISON's Regional Organiser, and some initial comments are set out below. There is a general feeling that Taunton Deane should hold off from making further radical changes in patterns of service delivery until the JMASS project with West Somerset has had time to 'bed in'.

Specific Issues

- The authors of the report appear to be solely Mendip or former West Somerset managers. There is no mention of representatives from Taunton Deane's Legal Services. Given that for some time there have been arrangements between WSC and Mendip for the provision of legal services, there is concern about the report's authors having a conflict of interest from Taunton Deane's point of view.
- The 'drivers' for the current proposal appear to be maintenance of the current arrangements between WSC and Mendip, coupled with the ambition of the Mendip manager to create a legal 'business' based in Mendip selling its services. Are these the right considerations from TDBC's perspective?
- No alternative options have been evaluated, so it is not possible to say whether the current proposal is the best, or indeed, appropriate. However, it is believed that TDBC staff did develop an alternative model based on TDBC delivering legal services to WSC – why has this not been put forward?
- If shared legal services are such a good idea, why have 2 of the 5 Somerset districts pulled out?
- No views of the TDBC Legal Services staff have been sought to determine if they have any proposals on how to make savings.
- Given that WSC and TDBC are now in a shared service arrangement, it would seem more in the spirit of shared services for WSC to contract its legal work to TDBC, rather than continuing to place it with Mendip.

- It seems wrong for TDBC staff to be transferred to Mendip in order to preserve an existing convenient arrangement for West Somerset and Mendip Councils.
- TDBC legal staff have said that they feel they could deliver the desired 15% saving in costs by delivering services to WSC.
- The proposal seeks to provide a shared legal service whereby all lawyers have extensive knowledge of a wide variety of legal issues. To achieve this, lawyers will require to undergo specialist training, which will be expensive and time consuming.
- The key benefits are proposed as being increased capacity and resilience, but no explanation has been given as to how this will be achieved with more or less the same staffing as currently exists, and which struggles to deal at times with existing case loads. There is an indication (page 37) that clients will be encouraged to be self-sufficient, but this might lead to wrong decisions being made and an increased financial liability for TDBC.
- The case for savings is based on reduction of overheads, but it is not clear how this would benefit TDBC. There is already a less management-heavy structure in place; costs of legal library are already shared with SCC and others (and maybe could be reduced further); and the use of a case management system could be delayed to free up those costs. Further cost savings could be made using the collaborative working approach which currently exists with those authorities who have chosen not to go into legal services. There would also be no need for the £20,000 investment on marketing and branding proposed by Mendip, or for any programme implementation costs.
- No figures have been provided to show how TDBC will benefit from reduced external legal spend, so this may need to be factored against the 15% saving put forward by Mendip. TDBC may find that their future legal service needs cannot be met by the shared service and consequently find that external legal spend increases.
- Although the proposal is described as a 'shared service', it is felt that this is a misnomer. In reality, TDBC would be forced to abandon its own legal service and buy its service from Mendip. Once TDBC had entered the shared service, it would not be allowed to buy legal services from elsewhere (although it currently does so: for example, TDBC's benefit fraud legal work is handled by Sedgemoor).
- On page 39 it appears to state that if TDBC wished to reduce to reduce its financial input to the shared service, the Council would be liable for the whole of any associated redundancy costs.
- TDBC would remain liable for a share of redundancy costs for 3 years. This does not sound good from the perspective of either the staff or the Council. If there are currently skill and capacity shortages in legal services, how can

there be scope for redundancies? Staff facing transfer to Mendip are also concerned that Mendip's redundancy terms appear less favourable than TDBC's.

- The proposed business model in some ways looks more like SWOne – albeit with all the partners being in the public sector. It is proposed to seek to generate income from contracting for other legal work in order to provide income and savings for the partners. This type of model conspicuously failed in the case of SWOne, the contract for which has actually lost money.
- It is understood that TDBC has 60% of the legal cases (more than WSC and Mendip put together). The proportion of legal cases accounted for by TDBC does not appear to be referred to in the business case or the appendices.
- TDBC has 60-70% of the legal staff across the three authorities. It's not clear why TDBC staff should be the ones to be TUPE'd to another employer when they comprise the majority of the staff. Surely if anyone is to be transferred to another employer, it should be the 1 person in Mendip, rather than 5 in TDBC? WSC do not have any legal staff.
- Under the proposals, TDBC will end up with no legal service of its own. Given the importance of legal services to local authority business, is this desirable? If TDBC were to TUPE its staff to Mendip, it could not bring such a service back in house if in future it wished to do so.
- The proposal appears to reject secondment of staff in favour of TUPE, although clearly secondment would offer TDBC the option to bring legal services back in house at some future date (as has happened with SWOne).
- It is incorrect for the report to claim that TUPE is favoured by UNISON – in fact, we have not been consulted on this (or any other) aspect of the proposals.
- TDBC is more centrally placed geographically to host a shared service between the 3 councils. Shepton Mallet is 30 miles from Taunton; indeed Mendip has no contiguous boundary with TDBC. One of TDBC's solicitors lives in Devon and travels to Taunton by train: this would not be possible if they were required to attend meetings in Shepton Mallet, which has no access by rail. Mendip have problems recruiting legal staff probably due its location.
- The suggested split of future 'savings' between the three councils does not seem to reflect the share of legal work each accounts for. TDBC apparently accounts for 60% of the work but is only shown as receiving 36% of future savings (page 28).
- TDBC is likely to face the same problem as affects outsourcing of services to private sector organisations. Once agreed monthly hours were exceeded, it would have to pay additional fees for additional work, as if it had outsourced the service. In current jargon, this is likely to have a 'chilling' effect, which seems undesirable with a key area such as obtaining competent legal advice.

It would be cheaper for TDBC to do the legal work in-house than to pay Mendip to do additional work at the proposed rate of £65 per hour.

- On page 29 of the Business Case it states that, in fact, a profit may not be made on services provided to non-local authority bodies (Local Government Act 2003). There appears to be an internal contradiction: how then could profits be made and recycled to the partners? Any local authority is likely to find that it could provide the service cheaper in-house rather than contract it to Mendip, who would be seeking to add a profit margin.
- It is proposed that TDBC's Assistant Chief Executive and Monitoring Officer would act as TDBC's 'intelligent client'. It is understood that this person does not have a professional background in legal services. As a former WSC employee, they are also arguably conflicted, as noted above, owing to the historic relationship between WSC and Mendip. What is actually being proposed seems to be not the 'intelligent client' model, but the 'thin client', under which the client organisation does not possess sufficient in-house skills to effectively oversee the contract. This has been widely shown to lead to poor results.
- TDBC legal staff feel that this proposal is something that is being done 'to' them, and not 'with' them. It appears that the Mendip manager has not so far met with any of the TDBC staff.

PNKB/111114

Appendix C

MANAGEMENT RESPONSE TO COMMENTS OF UNISON TAUNTON DEANE BRANCH ON BUSINESS CASE FOR SHARED LEGAL SHARED SERVICE (LSS)

In response to the comments submitted by the Unison Taunton Deane Branch on the shared service business case, the following response has been provided by the Officer Project Board including a substantial contribution from the Taunton Deane Borough Council(TDBC) Legal Services Manager who has had a close involvement in the development of the proposal.

Introduction

1. The concerns expressed by UNISON appear to fall within the following broad categories
 - Timing issues
 - Alleged lack of proper representation for TDBC in formulation of LSS proposals
 - Alleged failure to consider/availability of alternative options
 - Alleged deficiencies in business plan

Timing issues

2. UNISON are proposing that a decision on the LSS be deferred until the Joint Management and Shared Services project (JMASS) has had time to “bed in”.
3. UNISON’s comments assume that in the event of TDBC making a decision to defer its consideration of the LSS until after April 2015, West Somerset Council(WSC) and Mendip District Council(MDC) will be content also to defer the initiation of the project.
4. If TDBC for whatever reason elects not to join the LSS (or if for whatever reason the LSS does not start operations in April 2015), TDBC would still have the task of identifying savings of 15% from its legal services budget for the year 2015-16. Despite UNISON’s submissions, it is not clear how these savings can be achieved outside the LSS, and staff have to date made no detailed proposals in this regard.
5. If the LSS has commenced operations in April 2015 without TDBC, then while there may in theory be the potential for TDBC to join the LSS at a later date, it may be seen as more advantageous for TDBC to be one of the founders of the project than seek to join an established enterprise later on (even assuming that the other partners would by then be agreeable to TDBC being allowed to join the LSS as a “late arrival”, given its earlier refusal to join the service).

Involvement of TDBC in the formulation of the Business Plan

6. The UNISON comments allege that there has been no direct input from TDBC into the business plan. However, the business plan was drafted and finalized by the Project Board, which includes two TDBC/WSC senior staff within its membership of four.
7. The business plan and its appendices also include content derived from TDBC's records of its own in-house legal service.
8. Due to the progress made with JMASS at the time the Board was established, it was inevitable that any Board Members not from MDC would have been representing both WSC and TDBC at the time at which the draft business plan was finalized. The fact that both Boards members originally came from WSC should not be taken as an indication that TDBC has not been separately or properly represented.
9. In any event, the two TDBC/WSC representatives on the Project Board have been in receipt of regular and detailed (and constructively critical) input on the emerging LSS proposals from the TDBC Legal Services Manager, which have contributed to the business planning process.

Alternative options

Alternative options in general

10. The UNISON comments allege that no alternative options have been evaluated, but this is not correct. Over the period 2008-14, numerous options have been considered in detail, including – most recently – a County-wide service. For various reasons, these discussions have not led to the establishment of a shared legal service to date.

TDBC Legal Service Manager's alternative proposal October 2013

11. The UNISON comments also make reference to an "*alternative model based on TDBC delivering services to WSC*", as developed by TDBC staff.
12. As an initial observation, the fact that this model was submitted to the Chief Executive at TDBC in October 2013 would appear to contradict UNISON's assertion that no alternative proposals have been considered.
13. In fact this service proposal was formulated by the TDBC Legal Services Manager (LSM) in October 2013, and represented a formal response to the intended creation of the three way shared service with MDC as the lead authority, which was planned to become operational from April 2014.
14. This formal submission – which was delivered to the Chief Executive in late October 2013 – essentially proposed that the TDBC legal team was capable of delivering legal services to WSC as well as to TDBC. The submission also expressed concern that the apparent agreement that MDC would be the lead authority was being presented as a "*fait accompli*" even before a satisfactory business case had been presented, and that MDC was potentially not equipped

to act as lead authority. Further, it was felt that there might be an opportunity to involve other authorities within the service, specifically Sedgemoor and also possibly South Somerset.

15. These views at this time was based on the LSM's four months' service as Legal Services Manager at TDBC (from July 2013). With the benefit of thirteen months' hindsight, it is considered that that these conclusions were in some respects incomplete, and in other regards have been overtaken by events. Within three months i.e. by January 2014 it was clear that not all local authorities in Somerset had the same appetite to move swiftly forward in joining a shared legal service.
16. It is now considered that within the three proposed partner authorities, there is no viable alternative to MDC as the lead authority.
17. Secondly, for practical and operational reasons it is not now considered that the TDBC team could actually deliver the service to WSC.

TDBC as a possible lead authority

18. The UNISON comments allege that TDBC generates 60% of the legal cases initiated per annum across the three authorities. This figure is probably broadly in the right area, although unlike MDC and WSC, TDBC has no reliable statistical information which can confirm the number of new legal matters generated and the amount of chargeable hours worked by legal staff over the last 5-6 years.
19. The UNISON comments argue that because TDBC undertakes the majority of the legal work carried out by the three authorities and also employs the majority of the legal staff, then as a matter of logic TDBC should fulfil the role of lead authority, with staff from WSC and MDC being TUPE'd to TDBC.
20. In October 2013, it was the LSM's view that this possibility had not been considered in sufficient detail. However, on reflection, it is now agreed that of the three partner authorities, only MDC is in a position to assume the role of lead authority. In the LSM's view, TDBC is not in a position to act as lead authority because
 - it does not have the managerial resources which would support the incorporation of a full legal service within its staffing structure (at TDBC there is no solicitor at Assistant Director or Director level, whereas at MDC one of the Corporate Directors and the intended leader of the LSS is a solicitor) and
 - due to a virtual absence of performance information or systems, it does not have the means to provide client departments with accurate and detailed case management information, while by contrast MDC already has established systems in place

TDBC providing legal service to WSC

21. The legal services culture at TDBC is very distinct from that followed at the majority of other small to medium-sized second-tier local authorities.

22. The standard approach to the provision of legal services at such authorities is to concentrate on the recruitment of a number of generalist practitioners (perhaps between 3 and 6, depending on the volume of work – larger councils will develop legal “teams” dealing with broad areas of work such as “Assets”, “Environment” and so on). These general practitioners will have experience and knowledge in a medium to wide range of practice areas, and will be able to contribute to the Council’s legal work within all these areas. There will be specialists in certain areas – town and country planning is the most frequently seen – but even such lawyers will almost always be expected to contribute to other areas of the legal team’s work. Such a culture also anticipates that lawyers working with the authority will when called upon be willing (within reasonable limits) to deal with work outside their previous experience, or to take on new and emerging areas of work (such as the various facets of the Localism Act 2011, for example).
23. The culture at TDBC, which has emerged over a number of years, differs from this model. Specifically, it is apparent that the only “general practitioner” within the establishment is the LSM. TDBC’s approach to legal recruitment has been to employ specialists who concentrate on a very small number of practice areas, and the four other lawyers currently employed with TDBC all fall within this “specialist” category.
24. This approach to recruitment has had benefits for TDBC, as it has enabled the authority to retain practitioners who have detailed experience in their preferred areas of practice. All TDBC’s current legal staff have a large number of years of post-qualification experience, and all have long periods of service with the Council.
25. However, as the result of a skills audit carried out in March 2014 – after the submission of the October 2013 proposal – it became clear that these four staff were all working in comparatively limited areas of expertise.
26. As a result, there are numerous works areas – which would be regarded as standard areas of local authority legal practice – in which the team (with the exception of the LSM) have little or no knowledge and experience. In summary, these are
- Contracts and procurement
 - Corporate/commercial and business structures
 - Compulsory purchase
 - Town and country planning (high level/regeneration)
 - Licensing
 - Local government law (general)
 - Standards
 - Localism Act 2011
 - Elections
 - Committee attendance as principal legal adviser
 - Employment law

27. This point is actually acknowledged within the UNISON comments, which state *“The proposal seeks to provide a shared legal service whereby all lawyers have extensive knowledge of a wide range of legal issues. To achieve this, lawyers will require to undergo specialist training, which will be expensive and time consuming”*.
28. As a result, it is now clear that the TDBC team as it currently stands would have difficulty in delivering the range of legal services which TDBC and WSC would individually and collectively require. As with the TDBC work now, there would be a substantial dependence on the LSM to deal with all the work within the areas listed in para 26 above. It could be argued that this approach would not represent a sustainable business model, and would in this regard be inferior to the LSS proposal.
29. It could be argued (by UNISON) that TDBC could use the funding which WSC would contribute (in consideration for the provision of a legal service by TDBC) for the recruitment of an additional solicitor, who would cover these additional areas of legal work. However, recruitment of this nature would limit the savings which WSDC would be able to achieve, and which are being achieved under the LSS proposal. It is also not clear how TDBC would similarly achieve its 15% savings at the same time.
30. The UNISON comments also assume a willingness on the part of WSC to reassign its legal work from MDC to TDBC. While this would be consistent with the overall assimilation of these two authorities, there are significant practical reasons why WSC could prefer to retain MDC as its legal service provider. MDC has provided this service to WSC since 2008, and has achieved very high customer satisfaction ratings throughout this time. MDC’s legal staffing establishment is set up to take account of the caseload/chargeable hours requirement generated by WSC (currently approx. 70 hours/month), while TDBC’s staffing establishment is only set up to cover TDBC’s legal work. MDC’s legal staff also have a wider range of areas of expertise than the lawyers at TDBC, and it is questionable whether TDBC would be able to deliver the same level of service to WSC.

Business plan and other issues

31. It is noted that the UNISON comments make no specific reference to the recipients of the legal service at TDBC, namely staff in other departments, Council Members, and the public. In response it is suggested that the service to client departments and other recipients will be significantly improved by the addition to the working roster of the lawyers from MDC and the administrative officer from WSC. Discussions with client departments in late 2013 disclosed no substantial issues or concerns with the establishment of a shared legal service, although clearly more detailed liaison with clients will be needed as part of the formal process of engagement related to the current LSS proposals.
32. Despite UNISON’s argument, it is not intended that TDBC staff be expected to work on a regular basis at office locations which are inconvenient for them.

While it would clearly not be unreasonable to expect lawyers within the service to attend any of the three partner officers if a specific piece of work required this, it is intended that work be allocated amongst the LSS lawyers in order to avoid such travelling where possible, whether the lawyers are based at Shepton Mallet or Taunton. For the same reason, it is proposed that the service be operated in such a way as to allow the WSDC administrator to operate mostly from Williton with occasional visits to Taunton.

33. UNISON also identified secondment as a viable alternative to TUPE transfer which had not been properly considered. It is understood that this option was specifically evaluated in the business planning process, but that it was not felt to be appropriate for a LSS proposal which was intended to operate for at least an initial five year period. In order for the new LSS to be successful it is essential that the appropriate culture can be developed consistently and for this to happen there needs to be co-ordinated management of all staff involved that a TUPE transfer can facilitate.
34. UNISON have also argued that TDBC would be losing its own independent legal service, and it is envisaged that this may be a concern of some Council members when they consider the LSS proposals in 2014-15. In response, it should be emphasised that under the LSS, TDBC will have a formal entitlement to a set number of chargeable hours of legal work per month (based on the current levels of work performed by the team), delivered by the same lawyers as are currently employed by TDBC together with other lawyers who have expertise in those areas which the TDBC lawyers do not, while achieving a 15% saving for TDBC. It is for Members to consider whether in these terms the LSS would provide an improved service.

Conclusion

35. The specific priority for TDBC in its evaluation of the proposals for the LSS must be the securing of a viable legal service for TDBC in the medium and long term. In this sense, the UNISON consultation response is correct, in that TDBC's decision in this regard must reflect TDBC's interests, as distinct from those of MDC and WSC.
36. The 3 way MDC-led LSS is one of a number of theoretically possible options open to TDBC to secure the legal service which it requires: these options would appear to be:
- (1) County wide shared service
 - (2) Shared service involving all five Somerset districts and boroughs
 - (3) TDBC delivering a legal service to WSC
 - (4) TDBC continuing to provide its own legal service (with presumably WSC continuing to receive legal services from MDC)
 - (5) A 3 way shared service with TDBC as lead authority
 - (6) A 3 way shared service with MDC as lead authority **(the current LSS proposal)**

37. Of these six theoretical options, it is clear that (1) and (2) are for various reasons not available at this time.
38. For the reasons identified in this response, it is questionable whether the current TDBC legal team has the range of expertise to deliver a comprehensive legal service, either to WSC or even to itself in isolation whilst also delivering a 15% saving. On this basis, options (3) and (4) would appear to be ruled out.
39. This report also identifies clear reasons why unfortunately TDBC is not in a position to act as a shared service lead authority. Therefore option (5) would appear to be unavailable.
40. By a process of elimination, option (6) is left as the most viable option. However, it is almost inevitable that TDBC will be required to make a decision on inclusion within the LSS within a timescale which allows the LSS to commence operations in April 2015. A decision by TDBC to seek deferral would probably have the result of leaving TDBC to pursue option (4) by default, with the need to make a 15% saving on the legal services budget at the same time.
41. While option (6) has been categorized as the most viable option, this does not mean that it does not entail identifiable advantages for TDBC as a legal service recipient, as well as including advantages for the current TDBC legal staff.
42. One of the key aims is to create a sustainable future for a support service in an era when the requirement for efficiencies is almost universal as is evidenced by the need of TDBC and WSC to deliver a 15% saving for the next financial year.
43. In terms of staffing MDC actually have two substantive legal officers at the moment are carrying two vacancies pending decisions on the Shared Service. MDC have adopted this position in order that, should the Shared Service proceed they can seek to recruit at the right level and with the correct skills to fulfil any gaps identified during the implementation phase. As a result of taking this course of action MDC have been employing additional locum resource to bridge the gap and their existing lawyers have been acting up to help to fill the vacant head of legal post within MDC. Whilst this is an expensive option it was considered to provide the optimum solution as we moved towards the Shared Service solution.
44. The combined MDC/TDBC/WSC legal team has a head count of 10 in the baseline figures whereas the Shared Service solution has a headcount of 12; an increase of two. In addition to the additional resource the introduction of a case management system and a business service manager will enable and enhance the drive for greater productivity which, in turn will deliver the additional capacity necessary to make a success of this project for all three parties as well as the staff involved.
45. One of the reasons for the use of TUPE from one organisation to another within the proposed service was so as to ensure that staff were not disadvantaged. They also have pension protection. It should not be seen as a threat; rather it is there to ensure that they are, in the worst case, no worse off than they are currently. It also provides a single point of management to develop the LSS.

From: UNISON <unison@tauntondeane.gov.uk>
Sent: 15 December 2014 14:40
To: Griffin, Martin; Lang, Bruce
Subject: APSE report - Shared Legal Services
Attachments: APSE Taunton Deane Shared Service Report v1.0.pdf

Martin, Bruce

Here is the APSE report for your information.

I also asked APSE a supplementary question, to which they gave the following answer:

The report is more aspirational than assertive on selling legal services which is why I did not refer to it in the response. In section 7.3 of the Business Case it expressly states that “ No income assumptions have been made in this Business Case for business growth and new clients.” That said there are a number of liberally sprinkled references to income growth throughout the document some of which are linked to the possibility of selling services to other public sector organisations. Such a development would require a more detailed business case to justify it.

The reality is that the financial driver for the Business Case is reducing the use of external legal advice through developing in house skills and capacity. Unless there were to be an substantial increase in chargeable hours from existing staff and/or an increase in staff numbers then the capacity to sell legal advice will not be there. The issues around this are complex and would represent possible risk increases. It would require a move toward trading under the current legislation. It would also require Solicitors Regulation Authority approval and regulation which would be complex, time consuming and have a not insignificant cost. There are a growing number of local authorities who have taken this route and established Alternative Business Structures (ABS) to do so e.g. Birmingham and Kent. So far as I am aware no shire districts legal services teams have attempted to go down the ABS route as by and large they lack the size, capacity and saleable skills which would justify such an approach.

Regards

Phil

Phil Bisatt

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Response to the business case on a shared legal service for Mendip DC, West Somerset DC and Taunton Deane BC

Report for UNISON

This report has been prepared by Andrew Uprichard, November 2014, Version 1.0



GB 11409



GB 11132



GB 14074



APSE (Association for Public Service Excellence) is a not for profit local government body working with over 300 councils throughout the UK. Promoting excellence in public services, APSE is the foremost specialist in local authority front line services, hosting a network for front line service providers in areas such as waste and refuse collection, parks and environmental services, leisure, school meals, cleaning, housing and building maintenance.

APSE provides services specifically designed for local authorities, such as benchmarking, consultancy, seminars, research, briefings and training. Through its consultancy arm APSE delivers expert assistance to councils with the overt aim of driving service improvement and value for money through service review and redesign. APSE delivers in excess of 100 projects a year and clients benefit from the consultancy's not for profit ethical approach to consultancy services.

Report for UNISON

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1. Scope of the report and exclusion

- 1.1 This report has been prepared by APSE on behalf of Unison in response to the Business Case for a Shared Legal Service by Mendip District Council (**MDC**), West Somerset District Council (**WSC**) and Taunton Deane Borough Council (**TDBC**) (**the Business Case**).
- 1.2 In preparing this note APSE has had sight of and reviewed the following documents:
 - 1.2.1 The Business Case (including its Appendices).
 - 1.2.2 Legal Shared Services Proposed Timetable.
 - 1.2.3 Report to WSC Scrutiny Committee on 13th November 2013.
 - 1.2.4 Mendip slides (Proposed Shared Legal Service – MDC, TDBC and WSC update for Unison and Staff 4th and 5th November 2014).
 - 1.2.5 Mendip Job descriptions.
- 1.3 We have also received the written comments of Unison on the business case

2. Executive summary

In preparing this response we have carefully reviewed the analysis in the Business Case and consider that it:

- 2.1 Fails to provide an explanation for the withdrawal of Somerset County Council and Sedgemoor and South Somerset District Councils from the county wide shared legal services proposal after completion of the outline business case and the impact of the same.
- 2.2 Ignores the possibility of a shared legal services arrangement based on WSC and TDBC in line with their existing shared service arrangements.
- 2.3 Lacks any volumetric analysis of TDBC cases which we understand will constitute the majority of the total number of cases thereby creating a risk in the establishment.
- 2.4 Dismisses a secondment model for the service without any explanation and potentially exposes TDBC to resilience risk in so doing.
- 2.5 Will fail to deliver TDBC 15% savings on current service cost in year one in accordance with one of the objectives despite assertions to that effect.
- 2.6 Is reliant on year on year reductions in fees and hired services to meet the objectives and fails to take any account of salary cost increases during the five year period.

2.7 Proposes a “thin client” rather than the asserted ‘intelligent client’ function in TDBC.

3. The business case: origins and proposal

3.1 Shared services can fairly be described as an idea whose time has come. In the face of large and continuing cuts in central government funding the Local Government Association (**LGA**) re-launched its national shared services compendium and map in September 2014. It now shows that at least 337 councils across the country are engaged in 383 shared service arrangements resulting in £357 million of efficiency savings. At least 95 per cent of all English councils are sharing services with other councils.

3.2 The LGA map and compendium shows 33 shared service arrangements in the South West region. These include the Single Joint Chief Executive and Senior Management team for TDBC and WSC as well as shared services between the two councils. It is in the context of these existing arrangements that the Business Case has emerged.

3.3 As the Business Case points out “Councils are statutory bodies and can only act within the powers given to them by Parliament. It is vital that a council operates within the law and that procedures are followed. A key responsibility of legal services is therefore to advise the council on the legality of its proposals, policies and practices.”

3.4 The Business Case makes clear that there have been a number of abortive attempts at a shared service arrangement for legal services:

3.4.1 In 2011 the Somerset Monitoring Officer Group developed an Outline Business Case for a Shared Legal Service which was not approved for implementation. In its aftermath a formal partnership for legal services between WSC and MDC was established.

3.4.2 A draft detailed business case was developed in late 2013 for a shared legal service between TDBC, WSC and MDC but not implemented, as the newly established Somerset Shared Services Task and Finish Group directed that a detailed case for a Shared Legal Service involving all Somerset Councils should be developed.

3.4.3 In February 2014 a formal Project Board was established and developed and endorsed an Outline Business Case confirming all councils commitment to work together to create a shared legal support service. The Project Board developed a draft business case, but the Business Case states that it was not finalised “...as the outcomes required by the Somerset Shared Services Task and Finish Group could not be delivered.” No explanation is given as to the non-delivery.

3.5 The Business Case goes on to set out the challenges which have faced legal services in local authorities and appears to use this as the basis for the development of the proposal for TDBC, WSC and MDC. It is unclear to what extent the challenges stated have materially affected the three authorities.

3.6 The stated objectives of the three councils set out in the Business Case are:

3.6.1 Deliver a 15% budget saving for WSC and TDBC;

3.6.2 Create a flexible resilience model, with a 'critical mass' of expertise;

3.6.3 Provide enhanced efficiency and effectiveness;

3.6.4 Will be constituted for a minimum initial period of five years subject to a review at the end of year 4.

3.7 The Business Case very briefly considers the options of do nothing and outsourcing as well as shared services before concluding on the latter as the preferred approach.

3.8 It goes on to state the project critical success factors and allocate priority to them. Those allotted the highest priority are:

3.8.1 Anticipation of customer and member needs;

3.8.2 Resilience;

3.8.3 Mandatory first right of request/refusal for service requirement;

3.8.4 Flexibility

3.8.5 Delivery of cash savings for TDBC and WSC;

3.8.6 Ease of delivery; and

3.8.7 Delivery of low cost services with quality

3.9 Various delivery options for the shared service are outlined in the Business Case before shortlisting the status quo, a company set up, a Joint Committee, a Lead Authority or full outsourcing. Each is considered in turn, although in doing so there appears to be some variation on the anticipated future sources of work. The preferred model is that of the Lead Authority

3.10 The rationale of the Business Case for the selection of MDC as the lead authority is encapsulated in the report to the WSC Scrutiny Committee as:

- a) they have the management capacity to absorb the work required;
- b) they have significant experience of managing such joint arrangements, for example, managing the WSC legal contract and also undertaking legal work for Somerset County Council;
- c) their financial requirements are more flexible which enables MDC to bear some upfront management costs whilst ensuring that MDC and WSC can benefit from immediate 15% savings; and
- d) they are *very* committed and keen to undertake this role.

4. Weaknesses of the business case

- 4.1** It is a matter of some concern that despite there being a county wide shared service proposal back in 2011 it never reached fruition and the latest attempt to do was rejected again by the County Council and Sedgemoor and South Somerset District Councils earlier this year. In the absence of an explanation there is a concern that the proposal was not considered viable by the other authorities. We would expect the authors of the Business Case to be explicit about the reasons for non-participation by the other authorities in order to assure the three councils elected members as well as staff that there were no perceived fundamental flaws.
- 4.2** Given the current shared service arrangements between TDBC and WSC we would have expected some attempt at an analysis of why these could not be extended to legal services between the two authorities. This was never considered presumably as the principal driving force for the document appears to be a desire on the part of MDC to move its current legal services arrangements onto a more viable long term basis.
- 4.3** The Business Case depends heavily upon information and customer service reviews generated from the existing service arrangements between MDC and WSC which only cover both councils. Whilst in itself this is not a concern it becomes one when extrapolations are undertaken with regard to the total shared service without regard to the situation in TDBC. We understand from the Unison branch at TDBC that around 60% of all cases in the shared service arrangements will be TDBC matters and that between 60 -70% of the staff are TDBC employees. Without a proper volumetric analysis and a review of likely future caseloads in TDBC there can be no realistic assessment both of the capability of the proposal to meet overall requirements nor to reduce the use of external providers through the development of specialisms, another key component of the proposal's financial viability. As both of these are critical to the Business Case, beginning the process without doing so first indicates a lack of rigour and constitutes a clear risk.

4.4 Whilst we would agree that in the circumstances the optimum model for the shared services arrangements would be by means of a lead authority model we consider the dismissal of secondment as a transfer model for the service to lack validation and in the case of TDBC to constitute a significant risk. The arguments advanced against secondment are that "...it does not provide clarity of direction. In particular such an approach will not deliver the requisite cultural change as contracts of the employees remain with the respective council; is only suitable in the short term; and can only operate on an individual basis as each employee has the option as to whether to transfer."

All of these arguments are specious. There are many successful secondment arrangements between authorities across the country covering both a wide range of shared services between authorities and some services outsourced to the private sector. Clarity of direction is for the inter authority agreement and the management of the service to provide. The provision of a properly drafted secondment agreement should facilitate any changes in culture which are necessary. Such an agreement would be expected to cover the duration of the proposal which is for five years. At the end of that period if the proposed arrangements are considered successful by all the parties we would anticipate that a TUPE transfer would follow to support its successor.

Should the shared service proposal fail to meet the requirements of TDBC for whatever reason, then a TUPE transfer at the outset would render it unable to meet its own need for legal advice at the end of the period without, either recommitting to the shared service structure on whatever terms are then available, procuring a replacement service elsewhere either from the public or private sector and/or recruiting a replacement team itself. Given that under the arrangements TDBC is committed to meeting redundancy costs in the first three years (albeit on a reducing basis), none of these are attractive propositions for TDBC and in five years' time some may not be viable. Put simply from the perspective of TDBC there is a significant resilience risk in adopting a lead authority model without utilising secondment as the mode of transfer.

4.5 The savings to TDBC from the arrangement are stated to achieve a 15% reduction on current budget. Appendix 7 of the Business Case (the Economic Case Legal Budgets) sets out the baseline budget and the projections for the next five years. The WSC Scrutiny Committee Report asserts that: "...in broad financial terms the business case demonstrates that for TDBC the annual cost of providing the legal service will be reduced by £37,535 to £212,695, representing a 15% saving." However this is incorrect. The figure appears to have been arrived at by comparing the baseline cost for TDBC to its year one share ratio of the net budget total and then adding back in the pension contribution which will need to be made for transferring staff. The saving in year one on this basis is £21,789 or 9.3% on the baseline budget. Only in the later years does the saving meet the 15% saving requirement stated in the objectives.

4.6 An analysis of Appendix 7 shows that beyond assumed savings on management costs, publications and subscriptions the real cost savings are to be made on fees and hired services with year on year reductions. Unless these can be delivered in conjunction with the projected income growth, there is no prospect of achieving the anticipated reduction in the cost of the service. It should also be noted that whilst the budget assumes income growth and some costs savings it makes no allowance over the five years for any salary costs increases.

We therefore conclude that the Economic Case Legal Budgets present no convincing basis for the assertion that a 15% cost saving can be achieved.

4.7 The proposal seeks to retain an “intelligent client” function with the Monitoring Officer (Bruce Lang) acting in that role for both TDBC and MDC. However we understand that Bruce Lang does not have a professional background in legal services. What is being proposed appears more akin to a ‘thin client’ under which the client organisation does not possess sufficient in-house skills to effectively oversee the contract. Such arrangements when implemented for other services have been criticised for poor results.

5. Conclusion

The Business Case outlines a case for a shared legal service which has been the subject of consideration by the three councils in various guises over the last three years. It is a matter of concern that despite repeated attempts to engage the other councils in Somerset in the proposal they have proved reluctant to do so.

Having examined the proposals set out in the Business Case we are concerned that insufficient rigour has been applied to the analysis of the service especially given the importance of the TDBC contribution to its viability.

We are concerned that no consideration appears to have been given to the resilience risk to TDBC from entering into a TUPE transfer with regard to a medium term arrangement for shared services.

We consider the financial case to be unconvincing so far as projected savings are concerned having regard to the reliance on year on year reductions on fees and hired services and note the lack of increased salary costs provision which further erodes the Business Case.

**LOCAL SERVICES
LOCAL SOLUTIONS**

Appendix E

MANAGEMENT RESPONSE TO ASSOCIATION FOR PUBLIC SERVICE EXCELLENCE (APSE) REPORT ON BUSINESS CASE FOR SHARED LEGAL SERVICES

To correct two points of accuracy:

- a) paragraph 3.4.1 of the APSE report states that a formal partnership for legal services between WSC and MDC was established in 2011 when in fact it was established in August 2008; and
- b) paragraph 4.7 states that the Monitoring Officer is proposed to be acting as the intelligent client for 'TDBC and MDC' when it should read 'TDBC and WSC'

The Independent CIPFA report – at Appendix F – sets out its comments on the APSE report in Appendix 1 of the report.

The response below addresses the seven areas highlighted in the APSE report from a Management perspective.

1. County wide proposal (2.1 and 4.1 reference) – this concern relates to seeking an explanation as to why Somerset County Council, Sedgemoor District Council and South Somerset District Council did not agree to go forward with a proposed shared legal service at this time.

In January 2014, the Somerset Shared Services Task and Finish Group requested the Somerset Monitoring Officer Group to prepare a detailed business case to explore the possibility of establishing a shared legal service for all the Somerset local authorities. The four critical success factors for such a case were set as:

Deliver minimum savings of 15%

Maintain current service standards

Develop/maintain a resilient service

Develop a flexible model where partner authorities can join at a later date.

When the project Board reported back, SSC, SSDC and SDC considered that resilience and maintenance of current service standards was critical, and given the only option identified in the medium to short term to deliver savings is from a reduction in staff, the project was no longer viable for them at this time. Whereas MDC, WSC and TDBC had a flexible approach and thus the project remained feasible as their key drivers provided the appetite and necessity to move forward as soon as possible towards the sharing of this service.

2. It is argued in the APSE report that the business case has not taken into account the possibility of a shared legal service between WSC and TDBC (2.2 and 4.2 reference) – this point has already been addressed in the Management response to the comments of UNISON TDBC Branch (paragraphs 11 To 17 of Appendix C refer).

In summary, the current TDBC Team, with the exception of the Legal Services Manager, do not have the range of legal experience to deal with the work of both TDBC and WSC which could leave the team disproportionately reliant on this one post– as confirmed by a skills audit undertaken in March 2014. WSC has received its legal service from MDC since August 2008 and customer satisfaction levels have been high over this period. It will obviously be down to WSC to agree its own position on the proposal and the overall Joint Management and Shared Services project between TDBC and WSC does not preclude either partner having the option of sharing services with other partners.

3. The Lack of volumetric analysis at TDBC (2.3 and 4.3 reference) – this is a fact that the Project Board acknowledge and has not helped in the preparation of the business case. This is not a reflection of a lack of rigour in the process as the information was just not available- it does however provide a risk factor that the Project Board are well aware of (and was also acknowledged in the independent CIPFA report). This emphasises the importance of putting in place appropriate ongoing monitoring and management arrangements going forward (whatever option is chosen) to put in place the good practice that already exists within the existing arrangements between MDC and WSC.

4. Adopting the TUPE approach as opposed to secondment (2.4 and 4.4 reference) – this is a similar to the issues considered by WSC and TDBC when they considered the JMASS staffing structures. There are benefits from bringing the staff together under one employer who will then have the ability to drive through the creation of the new shared service with full management responsibility for staff. This will allow the partnership to develop a consistent approach to staffing matters for all staff.

Operating under a long term secondment arrangement would require additional requirements for ‘clienting’ the partnership to ensure that the seconded staff maintain a relationship with their employer.

5. That the 15% saving will not be achieved in the first year of the project (2.5 and 4.5 reference) – the point in respect of the pension contributions is acknowledged as valid as TDBC will not be able to reduce its pension contributions following of the transfer of staff should the proposal go ahead. The Section 151 Officers are undertaking further due diligence in regard to the detailed figures supporting the business case and have therefore revised the anticipated target savings for TDBC to 10 to 15 %. This does not affect the proposal as in respect of WSC where the anticipated savings target remains at 15%.

6. That overall the proposed 15% saving may not be delivered (2.6 and 4.6 reference) – taking into account the matter raised under item 5. above and the further due diligence work being undertaken in respect of the detailed business case figures in respect of TDBC, it has been considered prudent to revise the anticipated target savings for TDBC to 10 – 15%. As previously mentioned, the savings target for WSC remains at 15%.

7. The appropriateness of the proposed client function (2.7 and 4.7 reference) – if the proposed business case is adopted then there will need to be an effective ‘client’

role (whatever descriptor is used). This role is important for TDBC and WSC in the lead authority model to ensure that both councils benefit for an efficient, high performing and value for money legal service from the new arrangement. It is proposed that the Assistant Chief Executive and Monitoring Officer should undertake this role as the post-holder who has ultimate managerial responsibility for the provision of legal services for both Councils. The APSE report makes reference to the current post-holder of this post not having a 'professional background' in legal services. The post-holder is not a qualified lawyer or solicitor. The post-holder has been directly responsible for the detailed oversight of a legal service under a partnership arrangement between MDC and WSC since 2008. This has involved holding regular appraisal meetings with the contractor, reporting on performance to elected members and negotiating the original and revised terms on behalf of the client to ensure continuing value for money. The role is required to ensure that the appropriate outcomes are delivered from any such arrangement as opposed to managing the service directly and providing direct legal advice- that it the role of the lead authority and the qualified staff that are employed by them. It is not unusual for such a client role to be undertaken by a post-holder who is not directly qualified in the service(s) that they may be responsible for under a partnership /contract/out-sourcing arrangement; for example, to procure Human Resource, Valuation and Audit Services.

Appendix F

Independent Review of Business Case for shared Legal Service between Mendip District Council, Taunton Deane Borough Council and West Somerset Council.

19 December 2014



INDEPENDENT REVIEW

Cipfa have been asked to undertake an independent assessment of the Business Case for a shared legal service between Mendip District Council (MDC), Taunton Deane Borough Council (TDBC) and West Somerset Council (WSC).

The purpose of the review is to give an assurance that the proposals outlined in the business case are capable of meeting the objectives set. First, by reviewing whether the strategy is clear; secondly, whether all possible considerations for achieving the strategy have been properly explored and planning has been comprehensive; thirdly, whether the solution is capable of achieving the strategy and fourthly whether the delivery vehicle is adequately robust and resilient for the future. Our findings are detailed below.

Our overall conclusion is that the business needs are clearly enumerated in the Business Plan and it lists the benefits that should accrue. All of these benefits are consistent with the stated objectives of the councils. The Business Case is current and comprehensive and there has been examination of sensitivities, risks and assessment of their effect. There has been an assessment of future needs for legal services and potential changes in those needs. Financial details contained in the Business Plan are clear. As a result we consider that the Business Case provides a robust basis for decision making on the creation of a shared legal service.

There are a number of areas where we can see issues requiring further work, such as the lack of clarity about the TDBC workload, the ICT provision, continuing professional development and the attraction of income. There are still decisions for members to confirm (particularly around the acceptance by MDC of the risk of TUPE-ing staff and underwriting the TDBC and WSC savings) and the creation of an exit arrangement. However, we do not see these issues as preventing decisions on the shared service being made.

We understand that this review may be shared within the three councils and its stakeholders. This review should be regarded as an opinion, not recommendations, to the decision makers of the three councils.

Ray Tomkinson,
Associate Consultant, Cipfa.



FINDINGS

Introduction

Sharing Legal Services between councils is not new. The earliest attempts were made before 2004. And there have been a growing number of successful arrangements. Cipfa supports these arrangements where they can be demonstrated to improve service quality and in a time of financial austerity where the arrangement can be demonstrated to offer a robust and resilient delivery mechanism.

The business case of the three councils for the sharing of legal services states the objectives as to deliver a 15% budget saving for WSC and TDBC; create a flexible resilience model, with a 'critical mass' of expertise; provide enhanced efficiency and effectiveness for a minimum initial period of five years subject to a review at the end of year 4.

The Councils are working quickly to develop this shared service in order to maximise the benefits it can achieve. The 'go live' date is anticipated to be April 2015, with full redesign and transformation of the services complete by April 2016. The ambition is to market shared services to other Councils, and public/third sector organisations.

The Business Case is accompanied by extensive appendices covering aspects of planning and project management.

We have been asked to comment on a report prepared for Unison by APSE which was provided to us on 17th December. This is referred to in the text of our review and particularly in Appendix 1.

Is the strategy clear?

The business needs are clearly enumerated in the Business Plan and the Business Plan lists the benefits that should accrue. All of these benefits are consistent with the stated objectives of the councils. Equally the critical success factors outlined in the business plan are consistent and have been appropriately prioritised.

That the Business Plan has been authored by officers of all three parties should give confidence that the objectives and desired outputs of the project are still aligned with the needs of the three councils although the final outcome of the Business Plan needs to be finally approved by the members of all three councils.

A concern has been raised by Unison that in joining the shared service, TDBC has given up its opportunity to provide its own service. This is rightly a strategic decision for the council to take, however joining the shared service does not mean that the decision could not be



reversed at a later stage, indeed a 4 year review opportunity is provided for before the termination of the agreement.

We have noted that on the basis of the budget figures outlined in Appendix 7 of the Business Case, the cost per head of population for MDC is £1.60, TDBC £2.11 and WSC is £3.82. This suggests that TDBC and WSC councils have a need to reduce their legal services costs.

Have all possible considerations for achieving the strategy been properly explored and has planning been comprehensive?

The Business Case that has been reviewed is current and comprehensive.

The strategy requirements are clearly stated within the Business Case and there has been examination of sensitivities and financial implications of handling major risks and assessment of their effect. The basis for calculating costs and comparison of delivery approaches have been agreed with key stakeholders at Project Board level.

There has been an assessment of future needs for legal services and potential changes in those needs and proposals for changed roles, responsibilities, training requirements, external resources; skills requirements and changed customer arrangements are contained in the Business Plan.

Financial details contained in the Business Plan are clear and changes in budget lines that reflect the structure of the new shared service are appropriate and proportionate.

There is uncertainty over around the generation of external income due to the lack of evidence of latent demand through a marketplace survey. We have been made aware there is a established and developing income stream from Somerset County Council for S106 work (a rapidly expanding area) which suggests that the income targets are achievable. We are, however not sure that £20,000 to be spent on marketing and branding is necessary at this stage although we recognise it may be needed to ensure external income over the medium term.

Risks have been compiled independently by the South West Audit Partnership. A review of the Risk Register demonstrates that the list is comprehensive and the level of severity of the risks has been appropriately identified. The most critical risks are 'staff resistance to change'; 'lack of managerial resources'; 'savings not deliverable'; and 'lack of member support'. The mitigating actions are reasonable and should be achievable.

There is however, a medium risk around the ICT provision which needs elevating, not because there is a difficulty in provision of a system (provided for in the budget) but that the



efficiency it brings requires significant changes in the methods of working, particularly for the TDBC staff to deliver the significant efficiency savings. We understand the Case Management system has been selected and budgetary provision going forward been made. The final move towards final planning and implementation is not expected to be made until after member approval which introduces a risk that its implementation may be after the start date of the shared service. We do not think that the start date should be delayed until the technology is available.

A further risk has not been enumerated. This relates to the lack of clarity related to the workload of staff in TDBC council that has not historically been recorded (though recording has now started) and is therefore un-scalable. Unison comments that TDBC generates 60% of the legal cases initiated per annum and this figure has been broadly accepted, although unlike MDC and WSC, TDBC has no reliable statistical information which can confirm the number of new legal matters generated and the amount of chargeable hours worked by legal staff over the last 5-6 years. This will require detailed ongoing monitoring to ensure appropriate management.

The delivery strategy is clearly defined, showing reasons for selection and agreed with stakeholders at Project Board level. This has yet to be fully tested with Member stakeholders.

Comparison with similar projects has been undertaken although there is limited evidence that the reasons for failed initiatives have been examined and learning gained. It is noted, of course, that the Project Board were all involved in the proposed 'Pan-Somerset' shared legal services proposal.

The Business Plan has discounted outsourcing of this functioning. The reasons relate to previous experiences of two of the councils. Cipfa do not automatically advocate externalisation of service delivery. In this case, the proposed shared service does not rule out external commissioning work where it is opportune, such as where a specialism or capacity does not exist. This arrangement would allow more favourable arrangements for all three councils rather than the three independently. Cipfa would support the four year review testing the potential for outsourcing alongside a robust review of the shared service to ensure value for money can be clearly demonstrated.

Business continuity and future exit, handover and transition strategies have been considered at high level by the Project Board. The proposals are measured and appropriate.

The Business Plan does not demonstrate documented involvement of and endorsement by Member stakeholders. It is recognised that the Councils' are working quickly to develop this shared service in order to maximise the savings that can achieve. The 'go live' date is anticipated to be April 2015 for a 5 year period. It is understood the Business Case has been to the Scrutiny committees of all three councils and approved by two but deferred by that for



TDBC. It is understood the main issues raised were about the provision for staff development; the ICT solution; the potential for break clauses and the timing of being asked to take a decision before the risk to be adopted by MDC had been approved. CIPFA consider these to be legitimate issues that members should raise but do not, in themselves, represent matters of principle that should prevent the Business Case being adopted once MDC members have agreed to adopt the risk of being the lead authority for this shared service and agreeing to accept the TUPE transfer of the staff and the underwriting of the TDBC and WSC savings.

Whilst there was a review of other legal services in the Business Case and it is understood there was a benchmarking exercise of legal services across Somerset a couple of years ago, there was a lack of external benchmarking of similar shared legal services covered in the Business Case, this should continue to be a feature of performance reporting in the future.

It is noted that TDBC and WSC are working together on other shared services projects. Nothing in this proposal can be seen as preventing that continuing as effectively they are commissioning together the provision of the service through a joint shared service.

Is the solution capable of achieving the strategy?

The solution, a lead authority arrangement with all staff TUPE'd to MDC and the provision of a service for all three councils for five years is based on the principle that partner councils will share costs, expenses and savings involved in the sharing of services fairly, transparently and on an agreed basis. Open style book arrangements will be enshrined within the Inter Authority Agreement.

The TUPE transfers will create a single legal service of approximately 12 FTEs to service the needs of all three councils. MDC will be the lead authority and are to accept the future risk of delivering the commitments to the other partners. It is noted that MDC are carrying two vacancies pending decisions on the shared service giving the opportunity to recruit at the right level and with the correct skills to fulfil any gaps identified during the implementation phase. The introduction of a case management system and a business service manager will enable and enhance the drive for greater efficiency.

The initial assurance that the organisation has adequate expertise and capacity to undertake delivery of the requirement rests on the understanding that clients are currently content with the service currently provided (untested for TDBC services) and will continue to be satisfied. This is the most significant challenge for the shared service alongside achieving the anticipated savings.

The choice of MDC as the lead authority has been challenged, on the basis that the workload at TDBC exceeds that of the others. It is correct that the staffing costs at TDBC is



larger than at MDC (and at WSC) but the total volume of legal activity is larger at MDC. Further, at MDC, one of the Corporate Directors and the intended leader of the shared service is a solicitor (were that to change, then it would be appropriate for the partners to review the position); there is case management arrangements in place; the council has a track record of satisfying customers of another council and the legal services culture at TDBC council is very distinct from that followed at the majority of other small to medium-sized second-tier local authorities and can only be changed in the short term by joining another council that has already adopted and worked with that approach. These are strong reasons for adopting MDC as the lead authority, not doing so would risk the speedy achievement of the proposed savings and quality improvements.

Other challenges relate to the distance between the councils and the cost and time involved in travel. Provision has been made in the prospective budget for some additional expense but there is no reason that travel requirements cannot be minimized by careful management. Also that secondment should be used rather than TUPE. This is extensively covered in the APSE paper. The danger with using secondment as a vehicle is that it damages the commitment on all sides to the shared service and restricts the opportunity for change and development that will be needed going forward – as this is required in the short term, the choice of TUPE is appropriate.

The Business Case however is silent on whether there are different terms and conditions amongst the staff being brought together and if there are, this may be an issue that may slow down speedy integration and cross working.

Is the delivery vehicle adequately robust and resilient for the future?

We have reflected on the transference of risk to MDC Council and note that it is initially significant. As a result it is important that the MDC members recognise this before committing themselves to the proposal. In part the risk has been appropriately mitigated by requiring one of the partners that may wish to reduce their requirement for legal services to accept the costs of redundancy for TUPE'd staff. This is reasonable.

Once created the shared service will have a significant task to deliver its savings targets through efficiencies and reducing external commissioning of legal advice and attracting income from other parts of the public sector and the non for profit sector. Though the targeted amounts are modest and there are examples of this happening in other similar situations, it will require management focus. Additionally, if the aspirations of other councils to join the shared service come to fruition this may divert management focus.

A further issue is the absence of clarity around whether the existing staff have the right skills to cover the needs of all three councils to the extent that they can reduce external legal services expenditure. This is being partially mitigated by the writing of new Job Descriptions but this may not fully resolve the issue. The current vacant posts in MDC council will assist in



overcoming this as will training. This may require additional budget provision for more continuing professional development.

Another issue that may cause difficulties is the issue of the lack of knowledge of requirements at TDBC Council. This may appear once agreed annual hours were exceeded (currently set at a comparatively low figure of 1100 per FTE) though this is unlikely to arise until April 2018 and because historically TDBC have not monitored advice/activity then a culture change is required to ensure there is clarity with customers and there will be a need for robust management of those potential difficulties by the TDBC client.

The Business Case is silent on the exit strategy for each council at year 5 and there is no clear intention laid out for the future arrangement beyond year 5. Prior to that oversight will be undertaken by the scrutiny committees of all three councils. As there is no specific exit strategy currently, it is understood that one is being developed for the Inter Authority Agreement which will, in effect, be the contractual terms of the arrangement and will go to Cabinet(s) and Council(s) in early 2015. Such a strategy will assist the resilience of the shared service by explaining the terms under which the arrangement could be ended thus focusing attention on any improvement needed in those areas.



APPENDIX 1

The APSE opinion for Unison

The report provides an Executive summary of their main conclusions: in summary they are that the Business Case fails to provide an explanation for the withdrawal of Somerset County Council and Sedgemoor and South Somerset District Councils from the county wide shared legal services proposal; ignores the possibility of a shared legal services arrangement based on WSC and TDBC in line with their existing shared service arrangements; lacks any volumetric analysis of TDBC cases which they understand will constitute the majority of the total number of cases thereby creating a risk; dismisses a secondment model for the service without any explanation and potentially exposes TDBC to resilience issues; will fail to deliver TDBC 15% savings on current service cost in year one in accordance with one of the objectives and proposes a “thin client” rather than the asserted ‘intelligent client’ function in TDBC.

Reference is made to some of these issues in the main body of our review.

The APSE report focuses heavily on the failure of the ‘pan- Somerset’ sharing proposal. We note there is no reference to failed legal partnerships in the Business Case and an explanation of how this Business Case might have been altered to take account of this. This is a potential weaknesses in the construction of this Business Case but in our view of limited value in judging the merits of this Business Case.

With regard to the non-consideration of a shared service between WSC and TDBC, we consider it perverse to seek to unwind an agreement that is currently apparently successful and undertake an agreement between TDBC and WSC where there is apparently no capacity in TDBC to create such a sharing and ignores a willing third council to be involved. Another factor is that the current legal service in TDBC is too specialised to cover all the legal service needs at WSC, currently covered by MDC.

We agree the lack of volumetric analysis of TDBC cases creates a risk. We understand this is being mitigated currently by the collection of information. The risk is being further mitigated by the early development of case recording by the shared service and that any charging based on case numbers or complexity would not be brought into play until later in the arrangement. We acknowledge that this as a risk requiring a change of culture and careful management in TDBC, but do not regard this as a major stumbling block.

The reference to the Business Case dismissing a secondment model for the service without any explanation and potentially exposing TDBC to resilience should be seen as an issue in two parts. First, the issue of secondment versus TUPE transfer for individual staff. It is correct that there are instances of secondment providing the basis for a shared service and



this could be adopted. It does inevitably however introduce an uncertainty in the development of any new organisation. That uncertainty is both for the employing council, the managers and the employee. In our view TUPE is much more logical and straightforward for all concerned and should provide a more cohesive and committed shared service. The existence of a TUPE transfer does not prevent the reverse arrangement taking place in the event TDBC wished to withdraw from the shared service.

APSE argue that the Business Case will fail to deliver TDBC 15% savings on current service cost in year one in accordance with one of the objectives. In this respect the Business Case is clear:

Taking the above factors into account, whilst also seeking to ensure the longer term viability and growth of the service, the following immediate savings are delivered to satisfy the requirements of WSC and TDBC:

- *Reducing the base cost to the service required by WSC by 15% to an annual cost of £113,977; a saving of £20,113 per annum. This has been built into the model at Appendix 7.*
- *Reducing the base cost to the service required by TDBC by 15% to an annual cost of £212,695; a saving of £37,534 per annum. This has been built into the model at Appendix 7.*

Thus MDC will not be expecting to achieve significant savings in the first instance but will be reliant on the growth model to deliver benefits and expect to capitalise on this through the Sharing Formula.

Accordingly, it would seem the observation by APSE is not correct.

APSE suggest the Business Case proposes a “thin client” rather than the asserted ‘intelligent client’ function in TDBC. The argument is based on their view that the proposal seeks to retain an “intelligent client” function with the Monitoring Officer (Bruce Lang) acting in that role for both TDBC and WSC (erroneously stated as MDC in the APSE paper). They understand that Bruce Lang does not have a professional background in legal services. They argue that what is being proposed appears more akin to a ‘thin client’ under which the client organisation does not possess sufficient in-house skills to effectively oversee the contract and such arrangements when implemented for other services have been criticised for poor results. We have no knowledge of the skills and abilities of Mr Lang other than as Deputy Chief Executive and one of the authors of the Business Case he will have considerable exposure to the issues that will arise in the management of such arrangements and since he is already the monitoring officer for TDBC and WSC and already responsible for legal services in both councils, TDBC will be retaining the same level of oversight they have currently been enjoying. Indeed it should be improved by the additional monitoring



proposed through Scrutiny Committees.



APPENDIX 2

Documentation provided

Business case for a Shared Legal Service - October 2014

Appendices

List of services in scope of legal shared services project

Client satisfaction and identified needs

Shared legal services volumetric data report legal referrals by partner 2012/13 - 14 July 2014.

Best practice elsewhere

Overall data sharing protocol template

Service standards and performance indicators

Budget updated 24 October 2014

Project plan three way updated v5 – 30 October 2014

Shared legal service – engagement strategy - 11 July 2014

Legal, procurement and vires issues - 11 July 2014

Equality impact assessment form and action table – 14 July 2014

Shared services risk register – 11 July 2014

LS01 deliver efficiency savings BR FINAL – 19 November 2014

Shared legal services – Benefit Realisation plan final – 19 November 2014

Legal Shared Services – Business Plan Review – South West Audit Partnership – 19 November 2014

Business Case for A Shared Legal Service - Comments from UNISON TDBC Branch – November 2014

Management response to comments of Unison TDBC branch on business case for shared legal shared service (Iss) – Undated.

Report for Unison by APSE – 17th December 2014.

Ray Tomkinson

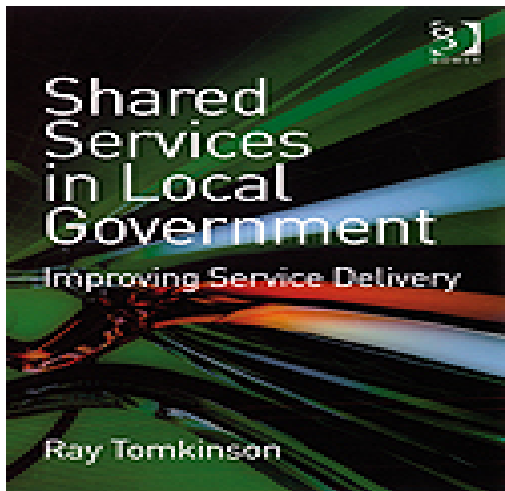
Associate to Cipfa.



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Project managed the development of shared services in the Welland Partnership 2004-5 and undertaken assessment work for development of shared services in several councils.

Published **Shared Services in Local Government 'Improving Service Delivery' 2007.**



Appendix G

Corporate Scrutiny Committee 13 January 2015

Shared Legal Services

Comments from UNISON

1. Following publication of proposals for a Shared Legal Service between Taunton Deane, West Somerset and Mendip Councils, UNISON commissioned APSE – the Association for Public Service Excellence – to review the Business Case.
2. APSE's response to the Business Case is included with this agenda. In summary, the main issues raised by the proposals are as follows.
 - I. There is no explanation as to why Somerset County Council, Sedgemoor and South Somerset District Councils withdrew from the original proposal for a county-wide shared legal service.
 - II. The potential for a shared legal service between TDBC and West Somerset Council, in line with the recently commenced 'One Team' shared service delivery arrangements, is effectively ignored.
 - III. There is no volumetric analysis of TDBC legal cases which are likely to constitute the majority of the legal work for the shared service, thereby creating a risk in the establishment.
 - IV. There is no justification for favouring TUPE over a secondment of staff to the shared service. TUPE will create a 'significant resilience risk' for TDBC whereby the Council will be unable to bring legal services back in house if there are subsequent issues with continuing the shared service.
 - V. The proposals 'present no convincing basis' for the claim that they deliver a 15% saving for TDBC in Year 1.
 - VI. The proposals are reliant on year-on-year reductions in fees and hired services to meet the objectives, and fail to take account of any salary cost increases during the five year period.
 - VII. There is concern that reliance on the Monitoring Officer to represent TDBC's interests as a client amount to a 'thin client' model (rather than the claimed 'intelligent client') under which TDBC will not have sufficient in-house skills to effectively oversee the contract.
 - VIII. APSE have subsequently commented that the Business Case is 'liberally sprinkled' with references to income growth throughout the document some of

which are linked to the possibility of selling services to other public sector organisations. Such a development would require a more detailed business case to justify it.

The reality is that the financial driver for the Business Case is reducing the use of external legal advice through developing in house skills and capacity. Unless there were to be a substantial increase in chargeable hours from existing staff and/or an increase in staff numbers then the capacity to sell legal advice will not be there. There are no known examples of shire district legal teams selling legal advice (for various reasons, including the fact that organisations are too small), and it therefore seems wrong to imply that this could be a future means of delivering 'savings' to the partners.

3. Members should be aware that in October 2014, Mendip was one of five district councils (led by South Oxfordshire and Vale of White Horse, and including Hart and Havant) issuing a prior information notice (PIN) of 'market testing' for outsourcing further services to the private sector – including legal services. It is not therefore clear why Taunton Deane should feel any obligation to Mendip to join in a shared service when they are evidently quite prepared to put their legal work out to private firms, a disposition that should act as a further warning against a TUPE transfer of Taunton Deane staff to Mendip.

Staff Comments on the Management Response to UNISON's original representations

Paragraph 5 – Notwithstanding MDC and WSC might refuse to allow TDBC to join LSS at a later date, why might it be seen as more advantageous for TDBC to be one of the founders of the project?

Paragraph 12 – Why couldn't 'Plan B' (the plan drawn up by the Legal Services Manager with knowledge of the needs of WSC) be considered by Scrutiny? It is all very well for it to be dismissed now, but the parties dismissing it have given no real reasons that scrutiny can consider. WSC and TDBC are supposed to be one entity and a reduction in their total budgeted legal spend would count as shared saving. Payment by WSC for their legal work (at the current rate less 15%) could enable staff resources to be increased if necessary to cover all the work. If all other service areas are joined it makes sense to look at the joint legal needs of TDBC and WSC as one and certainly that would be easier for client teams to understand rather than seeking advice from different teams solely based on geographical location of the legal issue.

Paragraph 18 – Is the problem with lack of chargeable hours info going to cause a bigger problem with 'buying back' hours within the shared service? How many hours will TDBC be receiving from the shared service if it is not clear from the outset how many hours are required by the organisation? Also, there are future work streams

(e.g. a potential quadrupling in TDBC asset property work) that need to be taken into account.

Paragraph 21 – TDBC legal staff do not agree that the Council's present culture is very distinct from that followed at majority of other small to medium sized 2nd tier local authorities. Adverts that appear in the Law Society Gazette are for lawyers specialising in distinct areas, not the proposed 'generalist' approach. 2 of the current legal team have been employed in other local authorities and have experience of how they operate. On the contrary, we would say that it is the LSM and MDC's approach which is distinct, not Taunton Deane's.

Paragraph 23 – Despite the Legal Services Manager's claim that he is the only 'general practitioner', where is the evidence that the general practitioner approach is in fact beneficial to the Council? It opens up Council to a risk of not having the best advice, because having to generalise removes the ability to apply oneself to more specific areas that are more frequently in demand. Also, there is a risk that a lack of expertise could allow opponents to be more successful, as inevitably private practice opponents are specialists.

Paragraph 24 – Regarding the reference to practitioners 'preferred areas of practice', is it not more the case that these areas of practice are the most prevalent/required at the Council? What is the point in generalising so that practitioners spend time training in areas that rarely come up? Surely it is more economical and risk averse to take external and expert advice on the few occasions that such advice might be required.

Paragraph 26 – The Legal Services Manager is not the only practitioner at TDBC to have experience in Compulsory Purchase. Reverts to the point that sometimes, in the interest of the Council, it is best to seek external advice in some legal areas, e.g., Employment which requires very specialist knowledge. Of the list of areas specified as being necessary, where has this information come? Currently clients say that all service areas are adequately covered, rather than there are a substantial number of areas not covered. Furthermore, if these areas do need to be covered on a regular basis rather than 'one off advice', members of staff have not been advised that there is a requirement for these areas to be covered, nor has any training been offered to ensure that staff can deal with these additional areas.

Paragraph 30 – All 4 members of TDBC legal team feel they are undermined and being considered as inferior to Mendip. Is this really a good way to start? It affects morale and is a catalyst for resentment. The TDBC team consider they are competent and have always delivered a high and very satisfactory service to their clients. Client feedback indicates that little if any work is not able to be dealt with by the current in-house arrangement, except where there is too great a demand to be met by resources. This shows that it is the available number of lawyers that is the issue, not the degree of specialism.

WSC and TDBC are one team and as part of JMASS are being restructured accordingly. This seems to suggest that if the shared legal service did not go ahead, that WSC would have a choice where to acquire their legal services. This appears to

be in direct conflict with the 'one team, one council' structure adopted by both councils.

Paragraph 33 – Secondment does not preclude there being a 'co-ordinated management of all staff involved' (as already happens at SWOne). Also, secondment is surely favourable to TDBC to ensure that it can 'take back' its legal team easily in the event of it seeking to exercise any of the proposed 'break' provisions of the proposed inter-authority agreement.

Paragraph 34 – It has already been identified at paragraph 18 that there is no statistical data for the chargeable hours currently worked by staff. If there is no current way of evaluating how many hours TDBC will be 'entitled' to, how can TDBC be offered a set of chargeable hours each month, and how can TDBC be sure that those number of hours will be sufficient?

It is a foreseeable risk to TDBC that the chargeable hours each month will be exceeded, and TDBC will then have to pay on an hourly basis for their legal work, which would not be cost effective and could exceed the amount of savings being suggested. Any additional hours will cost substantially more than the cost of a solicitor currently, and there may be insufficient resources available to service the additional demands. Furthermore, there has been no consultation with clients within TDBC in regard to 'work streams' (including Property Services) or indeed the level of work which will be coming to Legal.

Paragraph 43 – We have been told by more than one source MDC have always had trouble recruiting due to its geographical location. It is 'spin' to be saying they have been holding fire to recruit whilst waiting to see if the proposal is accepted.

Paragraph 44 – Case Management System will be used primarily as a management reporting tool. CMSs are effective for high volume caseloads of the same nature, e.g. bulk conveyancing, mortgage repossessions, bulk debt recovery. The team already has its own precedent letters and Forms etc. set up to use where necessary. A lot of work is bespoke, and does not warrant the significant expenditure for a CMS. TDBC according to the accountant preparing the Business Case appendix has already purchased in full a CMS, so if necessary, implementation could be rolled out costing no more and delivering the same information return.

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