

TAUNTON DEANE BOROUGH COUNCIL

SCRUTINY COMMITTEE 24 JULY 2018

SHAPE LEGAL SERVICE – CONTRACT UPDATE

This matter is the responsibility of Executive Councillor Andrew Sully, Portfolio Holder for Corporate Services

Report Author: Paul Carter, Assistant Director - Resources and Support

1 Executive Summary

1.1 This report summarises and reviews the current contract with SHAPE for the provision of Legal Services to TDBC.

2 Recommendations

2.1 The Committee are asked to note the contents of this report and comment as necessary.

3 Risk Matrix

3.1 No applicable – information update only

4 Background Information

4.1 Up until 31 March 2015 the Council's legal services were provided in-house by directly employed staff. Since 2015/16 the Council has received its legal advice and support through SHAPE who provide legal services to:

- Taunton Deane BC
- West Somerset Council
- Mendip DC
- Somerset CC (limited to legal work on S106 agreements only)

4.2 The Council entered into an inter-authority agreement with Mendip and West Somerset for SHAPE to provide services to the Council for the period 2015/16 to 2019/20. Legal services staff who were previously employed by TDBC were TUPE transferred to Mendip DC at the beginning of the SHAPE contract.

4.3 The SHAPE contract covers the following areas of legal advice:

Corporate/Governance	Planning	Training
Commercial	Highways	Health
Property	Information	Procurement
Enforcement/Prosecutions	Electoral Law	Complaints
Employment	Housing	
Litigation	Licensing	

Contract exclusions include:

- Monitoring officer functions (but can be included by agreement)
- Complex commercial cases
- Any matter where it would give rise to a conflict of interest

- Legal work on matters already outsourced

4.4 The Council invariably requires legal support for most of the new projects and initiatives that it is involved in, for example SHAPE are currently providing support to the Council on a number of key projects:

- Creation of the new Council
- Support for Growth projects ie Firepool
- Commercial projects ie Hotel project

SHAPE have both directly employed and locum solicitors working for them and are organised into particular specialisms including:

- Corporate Law
- Litigation
- Housing
- Planning
- Property

However, where necessary SHAPE will externalise work where there is insufficient in-house expertise or capacity. TDBC have the option to also use external solicitors where SHAPE are unable to provide support but this is at the direct expense of TDBC. SHAPE ensures that there are staff available, throughout the week, at Deane House, and the SHAPE Business Services Manager routinely works at Deane House and attends Full Council meetings.

4.5 **Financial Arrangements**

When TDBC entered into the contract with SHAPE in 2015/16 it was agreed that each authority would contribute based on the caseload at that time. In addition a 15% cost reduction (compared to the cost of TDBC's existing In-house legal team) was negotiated. TDBC's original contribution to the partnership was estimated at approximately 36% of total caseload across the 3 Councils, this equated to a contribution of £201k per annum. However it should be noted that there was little management information to verify the 36% contribution, and this was viewed at the time as an approximation only.

4.6 The contract with SHAPE also allowed for inflationary increases in cost to be passed on but in reality these have not been charged by SHAPE up until 2017/18. In order to protect against any overall financial deficit being borne solely by Mendip DC (the host authority) the contract also allows for any in-year financial deficit within SHAPE to be recharged to the partner Councils.

4.7 The contract with SHAPE allows for annual financial contributions to be reviewed from 2018/19 onwards (yr4 onwards). The most recent data from SHAPE indicates that the actual use of SHAPE by TDBC actually equates to circa 54% of total caseload. Members maybe interested to know that TDBC commissions circa 400 separate instructions to SHAPE each year. As a consequence the 2018/19 budget was revised to take into account an increase in fees of circa £100k. The Council's 2018/19 contribution now being circa £303k pa. The main increases in caseload relating to contracts, monitoring

officer guidance and property related matters. Conversely contributions by Mendip DC and WSDC have reduced accordingly.

4.8 The Council also pays for specialist legal services provided through a locum solicitor employed by SHAPE on specific complex commercial cases such as Firepool, the Hotel development, external loans etc, which are over and above the base contract. The cost of this additional support is approximately £6,000 per month.

4.9 Overall it is estimated that compared to the hourly rate charged by external solicitors that SHAPE is between 25% and 33% less expensive for the Council.

4.10 Contract Monitoring

The Assistant Director – Resources and Support, is responsible for monitoring the SHAPE contract. Quarterly client meetings take place with the SHAPE Business Services Manager and the Mendip DC Group Manager – Law and Governance, to discuss the contract, these focus on particular issues such as:

- Staffing changes
- Organisational updates
- Expected new work instructions/ new projects
- Feedback from service users
- Contractual updates

4.11 Officers from SHAPE have also provided briefings to TDBC/WSC managers to ensure there is a wider understanding of the SHAPE contract and how best to commission legal support from SHAPE. The current contract does not include any performance indicators, however the Assistant Director – Resources routinely seeks feedback from service users on SHAPE.

4.12 Notice Periods

TDBC had the option to withdraw from the SHAPE partnership on 30 September 2018 by giving notice by 30 March 2018. TDBC has not exercised this option. The standard exit provisions in the contract with the partner councils requires 1yrs notice and notice cannot be given before 1 April 2019. It is therefore expected that the contract will run its full course until the end of 2019/20. Clearly this will be partially impacted by the creation of the new Council, however at this stage officers expect SHAPE to be the provider of legal services to the new Council for at least the first year (ie 2019/20).

4.13 Contract Performance

Whilst SHAPE is an external service which the Council procures via a contract it experiences many of the same issues as any other in-house Council service. The following is a list of the common issues experienced by both Council officers and SHAPE itself:

Issue	Impact and Remedy
Recruitment	SHAPE is still in effect a local authority employer and pay levels tend to be much lower than in the private sector – this makes recruiting into specialist roles difficult, compared to

	the private sector. Where necessary SHAPE will employ locum solicitors or agree with the Council that it can go direct to a particular external specialist.
Capacity	Given that largely SHAPE has a fixed amount of capacity available, increases in caseload mean that SHAPE is not always able to respond promptly to client requests. However where items are of an urgent nature SHAPE do their utmost to prioritise. An example being the recent upsurge in traveller illegal encampments.
Client Instructions	Officers commissioning advice from SHAPE need to be clear about what advice they require on an issue and too often submit requests for legal support without the appropriate level of authorisation, background information or with insufficient notice being given – this delays the relevant advice being provided and frustrates both SHAPE and service users.
Innovation	Local Government is changing fundamentally, for example a more commercial focus is being promoted within Local Authorities and sometimes SHAPE does not have the requisite expertise or experience in advising on these projects and schemes. This has been resolved by employing specialist solicitors and where necessary some work is externalised (ie legal advice on the impact of the North Taunton Housing development)
Communication	Inevitably there are, on occasion, complaints from both sides that there is insufficient communication on a case – SHAPE are looking at whether they can improve this by providing managers with a self-service portal so they can view the progress on their cases.

4.14 Future Developments

As mentioned above the SHAPE contract will continue to be used by both TDBC and the new Council, however it is important that the contract and the service provided adapts to meet the needs of its clients. In particular officers from SHAPE are looking at:

- Potential for bringing on new partners – such a move would potentially increase the client base of SHAPE across local authorities, town councils and the voluntary sector and generate a greater critical mass, with additional experience and expertise, as well as improve the ability of SHAPE to respond to national changes in local government.
- Review of the staffing establishment – to ensure that the current needs of clients is met with appropriate staff recruited who specialise in particular areas of law.
- Consideration of a more commercial approach when dealing with client requests and how work is managed within the SHAPE service – thereby ensuring that senior legal staff are focussed on the important, strategic cases.
- Review of customer satisfaction – with greater use of satisfaction surveys
- Continued support for New Council, Growth and Commercialism agenda.

- Development of Bespoke client instructions – to ensure that particular legal instructions from TDBC contain all of the relevant information required by SHAPE.
- Access to a self-service portal for client managers.

4.15 Options for Future Service Provision

As mentioned above the Council is committed to the SHAPE contract at least until the end of 2019/20. The table below summarises options for the future along with officer comments on each:

Option	Comments
1 - Extend the current contract with SHAPE (or contract with another external provider)	New operating structure assumes that an officer, as part of their ongoing responsibilities, will “client” the SHAPE contract.
2 - Directly employ own legal staff	New operating structure does not include any Legal service staff. We could expect ongoing issues with ability to recruit and retain suitably experienced legal staff.
3 - Procure legal support externally	Less cost effective then options above but specialist external support on particular projects is likely to be required
4 - Mix of options 1 and 3	Most likely given that the authority benefits from a larger pool of legal staff via SHAPE but also recognises that some particular specialist areas require expert advice which will need to be procured separately.

4.16 Conclusion

The view of Officers is that the SHAPE contract is working well and provides excellent value for money, it has been able to largely absorb the increase in caseload generated by the Council and the quality of advice provided is solid. The contract is sufficiently flexible to allow for “out of scope” work to be commissioned by the Council through SHAPE and the Council finds that it is invaluable to have legal support both on site at Deane House and at the end of the telephone. SHAPE routinely provide officers with advice on urgent matters within required timescales.

- 4.17 TDBC is actively involved in a huge number of projects and it is expected that, at some stage, SHAPE will be involved in each of these. Hence it is necessary to ensure that there remains sufficient capacity to service its clients and providing advice on increasingly complex and diverse council services. Officers from both TDBC and SHAPE are keen to promote a project team approach whereby lawyers are engaged as projects develop rather than simply at the legal compliance/sign off stage.

5 Links to Corporate Aims/Priorities

5.1 None for the purposes of this report

6 Finance/Resource Implications

6.1 The SHAPE contract is a significant contract for the Council. Changes to agreed subscription levels have been built into the 2018/19 budget, and the impact of the contract will be considered as part of the formation of the budget for the new council. Finance staff will work with the Assistant Director – Resources to ensure that any pertinent changes are reflected in budget monitoring updates to Members.

6.2 The bulk of the SHAPE contract is charged to individual service areas and where applicable specialist one off advice to specific capital projects.

7 Legal Implications

7.1 None other than this report provides an update on the legal service provided by SHAPE.

8 Environmental Impact Implications

8.1 None for the purposes of this report.

9 Safeguarding and/or Community Safety Implications

9.1 None for the purposes of this report

10 Equality and Diversity Implications

10.1 None for the purposes of this report

11 Social Value Implications

11.1 None for the purposes of this report

12 Partnership Implications

12.1 SHAPE is a key partnership for the Council and it is important that the partnership thrives and is able to develop and meet the needs of the partner councils.

13 Health and Wellbeing Implications

13.1 None for the purposes of this report

14 Asset Management Implications

14.1 None for the purposes of this report.

15 Consultation Implications

15.1 SHAPE consults with its clients prior to any significant changes to its operations.

Democratic Path:

- **Scrutiny 24 July 2018**
- **Executive – N/A**

- Full Council - N/A

Reporting Frequency – one off

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