

REPORT REFERENCE NO.	DSFRA/14/17
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	17 DECEMBER 2014
SUBJECT OF REPORT	APPOINTMENT OF IN-HOUSE LAWYER
LEAD OFFICER	Clerk to the Authority
RECOMMENDATIONS	<p>(a) <i>that a recruitment process be undertaken for appointment of an in-house lawyer, at the salary grade as indicated in this report and on the basis of an initial, three-year fixed term contract;</i></p> <p>(b) <i>that the Chief Fire Officer be delegated authority to make the post of in-house lawyer a substantive post during the fixed term period subject to the business case benefits being realised.</i></p>
EXECUTIVE SUMMARY	This report sets out in brief the history of legal services support to both Authority and Service, summarises outline and full business case reviews of this provision and proposes a new, blended approach, featuring both in-house and external support, going forwards to improve effectiveness, quality and efficiency in this area.
RESOURCE IMPLICATIONS	As set out in Section 3 of this report
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing human rights and equalities legislation.
APPENDICES	A. Appointment of In-house Solicitor (Legal Services) – Full Business Case (page numbered separately).
LIST OF BACKGROUND PAPERS	A. Provision of Legal Services – Outline Business Case

1. **BACKGROUND**

1.1 The provision of legal services to the Authority has a long and protracted history. Prior to combination, the former Devon Fire & Rescue Authority received, over the years, legal advice from each of its constituents (Devon County Council; Torbay Council; and Plymouth City Council). Owing to a mixture of factors – primarily either capacity to undertake the work or quality of work delivered – the actual provider changed. The terms of the Combination Scheme Order allowed this work to be commissioned without the need for any formal competitive tendering process.

1.2 More recently, following combination, the Devon & Somerset Fire & Rescue Authority has received its legal advice from two main sources:

- a Service Level Agreement (SLA) with Cornwall County Council for the majority of legal advice in a number of areas, principally human resources and property issues (including, where required, litigation). This is demand-led and delivered at a flat hourly rate irrespective of the qualifications/experience of the person providing the advice; and
- A low-value annual contract with a Barrister providing for:
 - specialist training on fire safety/fire investigation matters (including enforcement, PACE requirements etc);
 - 12 pieces of legal advice per annum on fire safety/RRO matters;
 - Representation/advice in up to 3 fire safety prosecutions. As a matter of practice, this representation is usually only used for significant, high-profile cases (for example, where the potential for loss of life is significant).

Legal advice is also sought on occasion from external sources (e.g. private solicitors) – either directly or under other framework arrangements, where this is felt to be more appropriate either in terms of requiring an urgent response or due to the specialist nature of the advice being requested.

1.3 In 2012, an internal review was commenced into the [then] legal services provision and seeking to identify the most appropriate provision for both Authority and the Service going forwards. This led to production of an outline business case which addressed, amongst other things:

- historical legal services provision and its effectiveness;
- analysis of spend on areas of legal advice (e.g. employment law, property issues etc.);
- identification and analysis of options for future provision ranging from the status quo to full in-house provision;
- identification and examination of the risks and opportunities/benefits associated with each option.

1.4 The outline business case identified the following drivers for seeking to revise the [then] current provision of legal services:

- Following combination of Devon and Somerset, the new Authority has increased in complexity and, over the past 18 months or so, has embarked on a bold and demanding journey to achieve excellence and to safeguard and improve service delivery in a climate of reducing central government funding. As part of this venture, the Authority is being exposed to – and requires access to frequent and regular advice on – a range of new initiatives, not least of which that relating to commercial trading activity.
- The absence of an in-house lawyer exposes weaknesses in sourcing appropriate and timely advice. Many of the issues now going before either the full Authority or its committees have a legal dimension that might best be explained at the meeting by an appropriately qualified person, thereby providing a degree of assurance to Authority Members during the decision making process that currently is not readily available.
- The Authority is currently operating in times where there is an increased risk of litigation and against a backdrop of continuous and – frequently – rapid change. Against this backdrop, both the Authority and Service are seeking to maintain and ideally enhance their reputation as being in the forefront of the field. The provision of relevant, timely, cost-effective legal advice is an essential ingredient if the risks associated with operating in such an environment are to be adequately mitigated.
- Linked to this, while in the main the provision of legal services via the Cornwall SLA has proven effective, there have been times when – for various reasons including timeliness, capacity and complexity of issue – the Service has had to seek additional/specialist legal advice at additional cost.

1.5 The outline business case concluded that the best option going forward would be to implement a “blended” approach featuring the appointment of an in-house lawyer, able to delivery directly legal advice in certain, core areas, and overseeing the outsourcing of other provision as required. This conclusion was supported by the [then] Senior Management Board. The Authority was advised of this position at the Members’ Forum meeting on 30 July 2012, the intention at that point being to progress to appointment of an in-house lawyer.

2. MORE RECENT DEVELOPMENTS

(a) Inter-Authority Agreement for the Provision of Legal Services

- 2.1 During the process of exploring how best to secure the appointment of an in-house lawyer, an alternative model of legal services provision – an inter-authority agreement – was proposed. By using what is termed the “Hamburg” exemption (recently codified into procurement law), this allows several authorities to collaborate in service provision on the basis of reciprocal benefit and subject to work being undertaken on a not-for-profit, cost recovery basis.
- 2.2 Local authority in-house provision is usually extensive in the areas this Authority and Service require legal advice and historically more cost-effective than external (i.e. private solicitor) provision. Given the specialist nature of the work, Bevan Brittan was commissioned to assist in drafting the inter-authority agreement for the provision of legal services. Given its innovative nature, the process to secure an agreement was somewhat more lengthy than initially envisaged but a final agreement was entered into in August of this year – for an initial three year period - with Devon County Council, Torbay Council, Plymouth City Council and Cornwall Council. Somerset County Council and the Devon & Cornwall Constabulary were invited to participate in this venture but declined to do so.

2.3 This agreement provides, amongst other things, for the Authority to access legal services, case-by-case, on a cost recovery basis. More pertinently, the agreement also allows for this Authority to provide services to the other parties to the agreement, again on a cost recovery basis.

(b) Pilot in-house lawyer (9 month fixed term contract)

2.4 In the interim to agreeing the final inter-authority agreement referred to above, an opportunity arose in June of this year to trial, on a nine-month, fixed-term contract basis, the appointment of an in-house lawyer. This appointment was subject to the following:

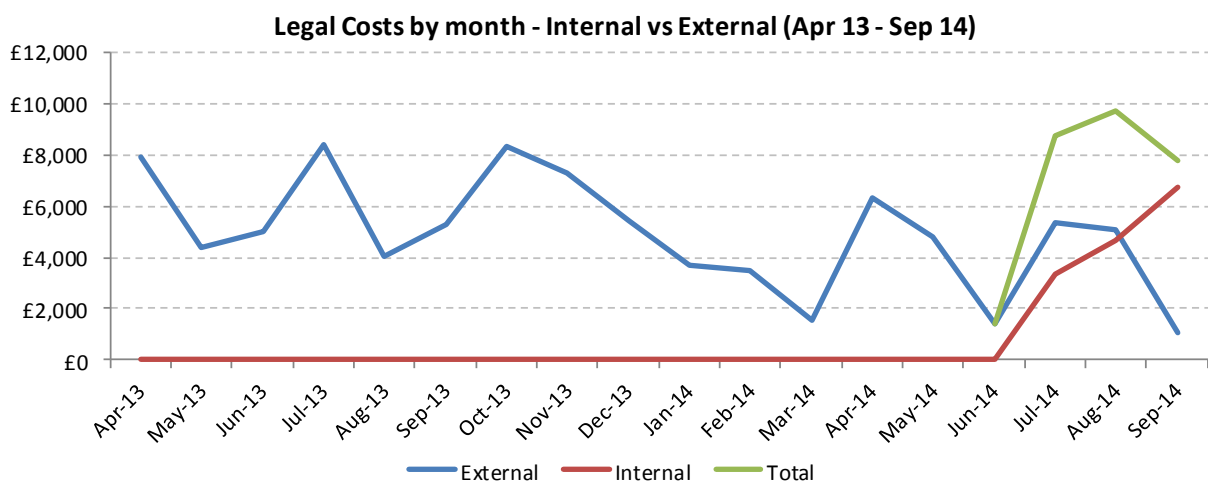
- an assessment as to whether the role of the Authority Solicitor was, in fact, viable;
- the production of a full Business Case for consideration by the Executive Board to demonstrate this viability; and
- should the resulting full business case be approved by the Executive Board, there would be a recruitment process conducted for the role.

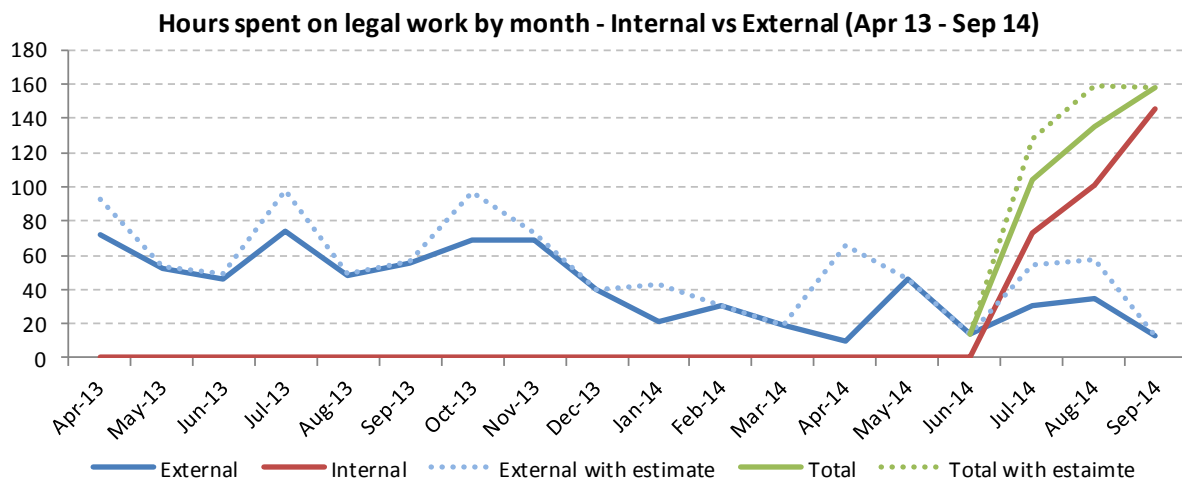
3. FULL BUSINESS CASE

(a) General Conclusions

3.1 The full business case referred to above has now been produced and was approved by the Executive Board at its meeting on 2 December 2014. This business case, which is attached at Appendix A, indicates that various metrics (including hours spent on legal work; spend on legal work) recorded from July 2014 to date supports the viability of the appointment of an in-house lawyer.

3.2 The two graphs (below and overleaf) are extracted from the business case and demonstrate a dramatic reduction in external spend on legal fees and also a considerable increase in hours received by the provision of internal legal services from July 2014 to September 2014





3.3 Additionally, the business case identified specific examples of “value added” benefits arising from use of an in-house lawyer, resulting in tangible cost-savings in several areas of work which would otherwise have been outsourced.

(b) Resourcing

3.4 As with all non-uniformed (“Green Book”) posts, the post of in-house lawyer has been subject to the appropriate job evaluation process. This indicates that the appropriate grade for the post should be Grade 11, which initially equates to a salary cost of £50,898 per annum (£64,831 including on-costs).

3.5 The business case indicates that a blended approach involving the appointment of an in-house lawyer can, as a minimum, be secured on a cost-neutral basis. Additionally, by virtue of the flexibility of the inter-authority agreement referred to earlier, the appointment of an in-house lawyer presents an income-generating opportunity that otherwise would not exist and initial assessment provides a high degree of confidence that such fee income could be circa £30,000.

4. CONCLUSION

4.1 The initial outline business case identified a number of drivers in 2012 (see 1.4 above) for seeking to revise the current provision of legal services.

4.2 While the inter-agency agreement entered into recently addresses some of the concerns relating to the Cornwall SLA (referred to in the last bullet point of para. 1.4), in that the Authority can now access a wider pool of legal advice, the drivers identified still hold true.

4.3 The full business case now indicates that a blended approach, incorporating the appointment of an in-house lawyer, can be secured on a cost-neutral basis as a minimum, affords the opportunity to realise income generation thereby driving costs down further and also affords the following, “value added” benefits:

- Legal considerations in decision making resulting in improved/confident decision making and reduced risk (e.g. advice and assistance to Estates in respect of various boiler failures at a number of sites across the Service resulting in repairs being carried out by the contractor without cost to the Authority, claiming additional losses and at present avoiding litigation)
- Relevant, timely, cost effective legal advice

- Improved access to legal advice
- Monitoring of external legal fees to reduce external spend
- Impact on the quality of internal evidence gathering
- Investigation advice
- Improved internal systems
- External representation, where appropriate, including at the Fire Lawyers Network and the Department for Communities and Local Government (CLG).

- 4.4 Appointment of an in-house lawyer (effectively bringing in-house an outsourced function) would increase the full-time, non-uniformed establishment by one full time equivalent. The Authority's approved Scheme of Delegations authorises the Chief Fire Officer to, amongst other things, effect minor variations in the establishment between uniformed and non-uniformed posts where this is in the best interests of the Service and effect changes in the establishment structure subject to any financial implications being met from within existing resources. However, the Service is operating within, and needing to make adjustments for, an increasingly difficult economic climate and any increase in staffing numbers must be justifiable in that context which is why this matter is being brought to the Authority.
- 4.5 The full business case exemplifies that significant benefits – including financial savings and the possibility for income generation - should accrue both to the Authority and Service from the appointment of an in-house lawyer.
- 4.6 Balancing all of these issues, it is proposed that a recruitment process should be undertaken for the appointment of an in-house lawyer initially on a three year fixed-term contract issues and that the Chief Fire Officer should be given delegated authority to permanently substantiate the post subject to realisation of the business case benefits. Furthermore, given the time required for the recruitment process and the notice period that the successful candidate might be expected to give, it is intended to extend the existing temporary contract to 1 May 2015 to ensure continuity of provision and also to allow for an appropriate handover period, if necessary.
- 4.7 This course of action is, therefore, commended to the Authority for approval.

MIKE PEARSON
Clerk to the Authority