

Central Bedfordshire Council

EXECUTIVE

1 December 2015

Shared Legal Services

Report of Cllr Richard Wenham, Executive Member for Corporate Resources
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This report relates to a Key Decision

Purpose of this report

1. This report maps out the existing provision of legal services to Central Bedfordshire Council and explores and then recommends moving to a shared service model. It explains the variants of shared services and sets out the benefits and potential risks of each.
2. The report also considers the practicalities of moving to a shared service model in the context of this council and makes recommendations as to the particular variants most likely to deliver savings and service benefits in the shortest timescale. The recommended model being that set out in paragraphs 54 – 61 of this report.

RECOMMENDATIONS

The Executive is asked to:

1. **note the content of the report and its Appendices including the proposal to deliver £240k savings in this service area in the 2016-17 financial year;**
2. **agree, in principle, to the establishment of a shared services arrangement with another local authority(s) for the provision of legal services for CBC, involving the potential TUPE transfer of CBC staff to a separate legal vehicle subject to the necessary staff consultation process being undertaken;**
3. **agree and recommend to Full Council the delegation of CBC legal services functions to a shared services provider in order establish a shared legal service; and**

- 4. authorise the Director of Improvement and Corporate Services, in consultation with the Executive Member for Corporate Resources to:-**
- a) devise and undertake a process for selection of a suitable partner for CBC for the purpose of establishing a shared service;**
 - b) agree the terms on which CBC shall enter into the shared service arrangement with the partner; and**
 - c) sign off on any relevant agreements to formalise the arrangement.**

Executive Summary

3. The report concludes that a shared service approach to legal services has the potential to deliver cost reductions whilst maintaining service levels and resilience.

Overview and Scrutiny Comments/Recommendations

4. A presentation on the background to these proposals was given to Corporate Resources Overview and Scrutiny Committee on 27 October 2015. The Committee was broadly supportive of the proposals. There were questions around the ways in which efficiencies might be made under this proposal whilst maintaining current service levels and around the detail of the current legal services – both of these issues are addressed in this report. Whilst the Committee was pleased to have received the presentation in advance of the report to Executive, there was a concern to give proper scrutiny to the proposals. It was therefore agreed to discuss the proposals more fully following the Executive decision and this has been put onto the forward plan of the Corporate Resources Overview and Scrutiny Committee for its' meeting on 15 December 2015.

Issues

Why legal services and why now?

5. In common with all other Local Authorities CBC is experiencing a tightening financial context over recent years and all the indications suggest that this is set to continue for at least another four years in order to enable the present Government to achieve its' objectives in reducing the deficit in public sector expenditure.

6. The financial challenge is heightened due to the effect of demography in Central Bedfordshire and rising demand for social care interventions along with a population increase creating further demand on universal services.
7. Given this ongoing challenge, and in light of the departure in the summer of the previous Head of Legal and Democratic Services and Monitoring Officer, the Director of Improvement and Corporate Services has been exploring innovative approaches intended to achieve the objective of doing the same (or more), with less resources. Underlying these efforts is the desire to protect the key frontline services such as adults' and children's' social care. This driver has focussed attention on the back office to deliver savings and there have been notable successes in this respect, but there is more to be done. The approaches explored by the Director of Improvement and Corporate Services broadly fall in to 3 headings:-
 - i) outsourcing to the private sector;
 - ii) shared/Collaborative service provision with other public bodies; or
 - iii) commercialisation, including traded provision of services and better exploitation of assets.

These approaches aren't mutually exclusive.

8. In relation to the first option – outsourcing to the private sector – over the past summer the Director of Improvement and Corporate Services met individually with partners from three large private firms who do a lot of public sector business including some of Central Bedfordshire's. These firms were Bevan Brittan, Wragge and TrowersHamelin. All expressed interest in partnering with the council and all were confident that they could bring a more business like and commercial approach. It was however difficult to see how they could do that and make cashable savings for the council whilst maintaining quality. The (partial) exception was Bevan Brittan who have an exclusive arrangement with a public legal partnership founded by Harrow and Barnet Council (HB Law). It is intended to invite HB Law to be one of the bidders for the partnership option described in this report. However the option of a direct partnership exclusively with a private sector firm has been rejected on the basis that it is highly unlikely to make any savings and in all probability would prove more expensive.
9. In relation to the third option, it was an expressed view of a proportion of existing legal services staff that this would be a viable option to generate savings. Unfortunately this does not appear to be the case, given the need to generate savings of around £240k next financial year – assuming a surplus of around 10% this would require a turnover of about £2.5 million next financial year from almost a standing start. This does not seem to be a realistic proposition.

Moreover, the trading environment for council's who are starting out is not easy – clients are careful who they choose to be their lawyers and to attract clients one needs to have an established reputation and track record. In addition the team must be highly cost effective and in order to offer a full service, you need lawyers who specialise. Finally, regulation is complex – if a local authority trades to make a surplus it must do so via a company and the competition is fierce. For these reasons, the option of our own legal services function trading directly and raising revenue has been rejected as unlikely to succeed.

10. There are three key requirements of the options explored in this report and recommended:-
 - They should make cashable savings. A target of at least £240k from the base budget has been set and is being recommended in the draft budget for 202015/6.
 - The quality of the legal advice and service must be maintained or improved – this includes requiring bidders to make proposals about how this will be guaranteed, taking into account the Council's current legal service and ensuring no diminution for example of the availability of planning lawyers or advocacy skills.
 - Current employees must have protection of terms and conditions and if possible improved employee welfare and terms.

The Savings Challenge for Central Bedfordshire Council Legal Services

11. This report focusses exclusively on the council's legal service. The financial challenge for that service is to reduce the cost to Central Bedfordshire Council of the service by 10 per cent of its budget in 2016-17. This equates to £240k.
12. There are broadly two methods in which cost reduction of this nature may be delivered to the authority:-
 - i) Reduce the Budget - Cutting the cost of the service through increased efficiency enabling staff reductions; enhanced control of costs; and/or
 - ii) Subsidising the cost of the service through generating a surplus on trading activities.
13. Shared service models offer the opportunity to combine the two methods and as such offer a compelling option for exploration.

14. There are a growing number of examples of local authorities who have or are in the process of pursuing the shared service approach with regards to legal services and this report describes the variations of the model which have been utilised.

The current Central Bedfordshire Council Legal service

15. CBC Legal Services comprises a team of 39 employees (34.52fte), comprised of qualified solicitors, paralegal and administrative staff. See Appendix A for breakdown.
16. The team aims to provide a comprehensive service for all CBC client departments and this covers the following areas of legal specialism:
 - i) child protection and associated litigation;
 - ii) legal issues arising in connection with Adoption and fostering;
 - iii) the law relating to Adult social care including ordinary residence and Deprivation of Liberty Safeguards (DoLs);
 - iv) Court of protection;
 - v) education including management of admission appeals;
 - vi) employment law litigation and advice;
 - vii) planning and development control including S.106, and planning enforcement;
 - viii) planning policy issues;
 - ix) highways law;
 - x) general property law including lease and licenses and conveyancing;
 - xi) contract and procurement;
 - xii) Judicial Review;
 - xiii) general civil litigation – evictions; breach of contract; and
 - xiv) Local Government law, corporate governance and monitoring officer function.
17. The above list of areas of activity exemplifies that fact that the legal issues arising for local authorities are wide ranging and this is one of biggest challenges faced by in-house legal teams in this sector. The legal profession, in common with other professions, has experienced a significant move towards greater specialisation and this in turn means that the in-house team must augment its service by using external solicitors and barristers whose charges reflect that fact that they include a significant uplift for overheads and profit margins.
18. The team members are divided into 3 main teams People, Commercial Services and Business Support, each headed up by a manager. These 3 teams are further sub-divided in to 9 teams based on functional areas.

19. The budget for Legal Services was realigned for 2015/16 to fully fund all establishment posts. The disbursement budget was also increased to allow for additional external costs incurred due to an increase in child protection matters.

Budget for Legal Services

20. A summary of the budget for 2015/16 is attached at Appendix A and the key highlights are as follows:-
- The projected annual cost of the in-house team for 2015/16 is £2.73 million.
 - Of this £250k is funded from the Housing Revenue Account and from charges levied to external bodies for legal work undertaken on matters such as S.106 agreements.
 - This leaves a net cost to the authority of £2.5 million the bulk of which is staff related costs which are budgeted to amount to £1.8 million in 2015/16 financial year.
21. In addition to the cost of providing legal services through the in-house team, CBC also obtains legal services from external sources. This external sourcing of legal services occurs for a variety of reasons including lack of in-house expertise and lack of capacity in terms of volume of work.
22. In any local authority the identification of this external legal expenditure is difficult to establish with precision for a number of reasons. However, an exercise has been undertaken at CBC to try and get a better idea of the volume of spend and the nature of the services being procured.
23. External legal services are usually categorised into Solicitors and Barristers because the services they provide are materially different. In 2014/15 the total identified expenditure on external solicitors and barristers amounted to approximately £886k. Of this £540k was spent on External Solicitors and £346k on Barristers.
24. At CBC the Legal Team has arranged access to a framework of external solicitors which is intended to provide better value for the external legal expenditure. The take up of use of the framework has been slower than expected and it is too early to assess whether its use will have any significant impact on the scale of the expenditure. Similarly, in respect of Barristers, a framework has been established by a group of local authority legal teams and CBC has access to this.

25. The cost of external provision is generally more expensive than the provision of in-house and as such it is an area where reduction of outsourcing can have financial benefits for the authority. This expenditure is one of the target areas where a shared service of greater critical mass may be able to avoid work being outsourced due to enhanced capacity and expertise.
26. Adding the cost of the in-house team to the expenditure on external legal support provides a value for the total expenditure by CBC on providing legal advice and representation in connection with its various activities. That figure is approximately £3.63 m gross and £3.4m net.

Volume of Case Matters

27. In addition to the financial cost of provision, legal services are also measured in terms of the number of cases or matters which are commenced or 'opened' in any one year. Although the measure is imprecise due to variations in the way in which teams identify matters and delineate between matters arising from associated circumstances or disputes.
28. However, the CBC legal team does operate a cases management system on which it records the details of distinct cases for storage and retrieval and in a limited number of cases for recording time against them for cost recovery purposes.
29. Under this system in 2014/15, 996 new matters were opened on the case management system and the numbers and some indication of the distribution amongst directorates is set out in tabular form at Appendix C.

Time Recording and Charging

30. Another method of measuring the activity in a legal service is through the recording of productive time spent by team members progressing matters being handled by the team. This is often referred to in law firms as chargeable time and is widely used in legal teams as a measure of personal productivity of individuals and of teams.
31. The CBC legal team does utilise a time recording system although in the large part the time doesn't relate to any cost recovery mechanism. It may be used by the finance team as an aide to estimating the distribution of legal re-charges across the directorates. There are some inconsistencies in the way time is recorded but the figure for total chargeable time provides some measure of the volume of work being undertaken by the team.

32. The table at Appendix D shows that the total recorded chargeable hours amounted to 37699 in 2014/15. In terms of individual productivity, we would expect to see rates at a minimum of 1300 per year. Applying this target figure to the recorded hours shows that productivity is approaching this level although it is likely that the recording practice is influenced by the fact that it is not closely monitored by clients and not directly related to what they pay.

What are the options for consideration?

33. The Local Government Association (LGA) recently published its latest map of shared services which identified 416 shared service arrangements between councils across the country resulting in £462 million efficiency savings.
34. A significant number of these involve back office services and deliver savings in a variety of ways. Studies such as the LGA sponsored Drummond McFarlane report which analysed a sample of shared services¹, identified savings arising factors including reduced management/staff overheads due to improved efficiency, economies of scale and increased income generation. In addition, non-financial benefits were also identified such as improved service levels and increased staff satisfaction.
35. The findings in this report have been verified by a growing body of research and examples of shared services across the public sector successfully delivering financial benefits for the participating bodies. Central government through initiatives such as the Cabinet Office 'Next Generation Shared Services Strategy' has also demonstrated its belief that this model is a credible and effective model for delivering savings whilst maintaining or improving service levels.
36. The research and practical experience also highlights key factors found in successful shared services such as a clear shared understanding between the participants as to the aims and objectives and transparency as to benefits and costs.
37. Visible, compelling and emphatic leadership is also regularly cited as a key determinant in the success of shared services in their early formative stages which involve transformational change similar to that experienced in company mergers.
38. The LGA research also used LGSS as one of its field study reference projects. LGSS Law, the combination of two county legal services, through a mixture of efficiency and trading surplus, was able to reduce its cost by £1.3 million (25%) per annum after 3 years.

¹ LGA – Drummond McFarlane – Services Shared: costs spared? 2012

39. On the basis of these and other credible examples the evidence supports a compelling case for the potential of shared services to deliver financial benefits when successfully implemented.

Shared Service – A variety of Models – Pros and Cons

40. As mentioned above shared service ‘arrangements’ come in a variety of shapes and sizes which range from peripheral collaborative activities to fully unified jointly owned enterprises. It is possible to identify the different models with the following broad categorisations:-

Informal Collaborations between two or more LA’s

41. Informal shared legal services arrangements have been in existence in different shapes and forms for some years and often involve the ‘toe in the water’ approach through straightforward sharing of externally procured inputs such as legal research facilities, (web based law libraries), and jointly procured frameworks for external legal services, an example of which is EM Law-share. It is also often the stated intent of the partner legal teams in such arrangements, to share ‘spare capacity’ in their legal teams. They can be established with very little in the way of formality and are specifically enabled by statute².
42. These types of arrangement have proved successful in providing marginal levels of savings on the costs of supplies to the legal teams but there is little evidence of savings derived from pooling of shared capacity. This last factor is often attributed to the fact that the teams rarely have spare capacity and the tendency to reluctance on the part of Heads of Legal to share in this way due to the fear that this will be the precursor to a shared arrangement resulting in a shared head of legal. As such, the few successful examples of these arrangements often arise in situations where a vacancy arises for the head of legal of one of the partners.
43. These arrangements have also been dogged by a perennial problem for shared services more generally which is the lack of transparency as to who is inputting and who is benefitting. It is often the case that in the absence of clarity in this regard each partner tends to the conclusion that they are disproportionately contributing more and benefitting less than other partners.
44. Problems have also arisen due to what might best be described as parochialism where one of the partners feels that they are the lesser partner of the two.
45. Due to the informal and superficial nature of the ‘sharing’ in these arrangements they are unable to drive out significant process efficiencies or develop combined teams that are able to deliver credible traded services to other bodies.

² Local Authority (Goods & Services) Act 1970

Lead Authority – Provide services to other LA's

46. The Lead Authority Model refers to a situation where one authority's legal team provides the vast majority of legal services to another or multiple other LA's. Although such arrangement might be referred to as a 'shared service', this type of model more closely resembles a straightforward provider client relationship albeit the provider shares more in common with the client. There will be little in the way of control or influence over the management of the service and this may give rise to concerns around the prioritisation of work and knowledge of the clients' circumstances.
47. There is also a lack of shared incentive to enable the service to work more efficiently as there will be no direct shared benefits for the client bodies.
48. There is an increased risk of successful legal challenge on the basis of breach of public procurement regulations.

Formal Shared Service 'Arrangement' with other Local Authority(ies) provided under Partnership and Delegation Agreement. (Often under the auspices of a Joint Committee.)

49. The Yorkshire Purchasing Organisation (YPO) which, in the 1990's, famously established some important legal principles for local authority sharing, is an example of this type of sharing arrangement and a more recent example, specialising in the provision of back office services, is that of LGSS which was one of the services reviewed in the LGA report referred to above.
50. These arrangements are usually encapsulated in some form of formal legal agreement and require specific provisions to be included in the partners' constitutions. They are established under the auspices of a Joint Committee which will provide elected member oversight and also enable the delegation of the specified local authority functions.
51. The Joint Committee isn't a separate legal entity, it remains part of the local authorities which established it. As such there is no new legal entity to which staff could transfer and they may remain as employees of their home authority. It is also possible to have a hybrid approach where staff transfer to one employer depending upon geographical considerations or in relation to particular services.
52. This model is familiar to local authorities, tried and tested and relatively straightforward to establish provided that the partners can agree the distribution of benefits. The costs of implementation are relatively cheap. There are no taxation consequences.

53. Potential difficulties can arise due to the complexity of the finances and the difficulty of accurately identifying the distribution of benefits and inputs. Because the joint committee isn't a separate legal entity the partner authorities must retain separate accounting systems which must be combined in respect of the 'shared services'. This adds complexity to financial management and requires from the participating councils a mature and pragmatic mind-set which is willing to accept the assumption that the benefit transfers will even out across the entirety of the arrangement over time.

A Formal Shared Service through Joint Ownership of a 'Teckal' Company

54. Perhaps the most integrated and refined model of shared service is that established via a separate but wholly owned legal entity. This is commonly a company limited by shares or guarantee but other examples have included Limited Liability Partnerships. The key point is not so much the type of legal entity but the fact that there is a new separate legal entity in which the partners may have a tangible interest and influence.
55. The LGA report identified Hoople Ltd as an example of this model. It formed a shared service between a County Council and an NHS Foundation Trust both of which organisations held shares in the company.
56. Two of the key benefits of such an approach are transparency and simplicity. This is of significance because it helps to ensure that the partners have clarity as to the distribution of inputs and benefits and this reduces the risk that the partners will have uncertainty in this regard which has been a significant cause of shared service failure.
57. The simplicity of the governance structure promotes understanding and enhances the sense of partnership through shared influence over the company.
58. The company/LLP model also produces an infinitely flexible model for shared ownership because the limited company model was designed to facilitate the participation of multiple owners of the entity.
59. The ability to have a tangible stake in the entity will also foster and strengthen the collaborative nature of the arrangement through the alignment of partners' interests in the success of the company.
60. The company model, by its nature, encourages and facilitates a more business-like approach to the arrangement.

61. On the other side of balance, a separate legal entity gives rise to additional regulatory and compliance issues such as company accounts and taxation. VAT and Corporation Tax liability will arise and the impact is likely to be more significant than the corresponding treatment of a local authority. As a consequence additional thought must be given to the appropriate management of any liability and it must be accounted for in any business case. However, given the profit margins required by commercial service providers it remains feasible to provide services significantly more cheaply through a public to public shared service notwithstanding the additional cost of tax.
62. **It is this form of partnership arrangement that is being recommended for Central Bedfordshire Council.**

Summary of Benefits Realisation

63. An important component of the decision to move to a shared service is the certainty of being able to generate cashable savings with no diminution of quality or of staff terms and conditions. The ways in which these savings can be generated are summarised as follows;

Efficiency Improvements

64. Improved systems, processes and support; development of specialist teams - improves productivity – reduces unit cost – reduces reliance on external legal services.

Economies of Scale

65. Spreading fixed cost over broader cost base – shared systems/procurement - increased buying power/leverage.

Employer of Choice

66. Particularly relevant in the context of legal service because competition is fierce for competent, pragmatic and energetic lawyers - easier to recruit good staff – virtuous circle.

Income Generation

67. Through increasing scale by merger the expanded team is better able to manage the peaks and troughs of demand and more importantly, is able to develop specialist teams whose members are able to deliver more quickly and more effectively due to their focussed knowledge of a particular area of practice.
68. There is a market for lawyers with specialist knowledge and experience of working within the public sector. If the rates are competitive this model is attractive alternative to commercial firms with their expensive overheads. The surplus generated on external work subsidises the provision to internal (owners). In a company model, financial benefits are delivered through dividend distributions and indirectly through discounted rates for shareholders.

Opportunities for Trading

69. Although a significant part of the savings will be delivered through becoming more effective and efficient these areas are subject to the law of diminishing returns as the low hanging fruit is harvested. As such, in order to seek more sustained savings it is necessary to generate income and surplus from external bodies.
70. If it has the appropriate legal structure and the ability to effectively market itself, a shared legal service may be able to attract a whole new client base within the public and the not for profit sector, this will include housing associations, which, alongside the health sector, is a growing market.
71. Such access will not only provide an opportunity to dilute its risk of exposure to a relatively small number of internal clients, but will also allow for a sustainable profit element to be generated.
72. The unique selling point for such a service is firstly its ability to maintain highly competitive rates due to less costly structures and secondly, for its wealth of specialist knowledge and understanding of the organisations it serves due to its sharing their challenges.
73. However, the legal services market is very competitive and there is a growing demand for fixed fees, call off packages and “white label” products.
 - Fixed fees - work is delivered for an agreed price.
 - Call off – client purchases an agreed number of hours at a fixed rate and uses them when required
 - White label – provision of template legal documents or standard products and services that are made available to purchase by organisations (including other law firms) for them to complete themselves or sell on to others.
74. In contrast, the traditional local authority market is reducing in size due to budget cuts and local authorities seeking to move front line services to new delivery models. As well as presenting a threat to this service, this presents an opportunity to provide legal services to the new delivery vehicles being established.
75. Smaller authorities are also reviewing whether it is a cost effective solution to retain small in-house teams that have limited expertise and resilience. The retention of a small in-house team often results in high costs, as work frequently has to be placed with private legal firms for reasons of capacity or the need for specialist knowledge. Outsourcing this work to another local authority is often perceived as difficult due to political or relationship issues. An offering from an ABS Company with a strong local authority ethos could be an attractive and cost effective alternative.

Opportunities for the Provision of Legal Services to Other Local Authorities

76. The following analysis was undertaken to establish the local authority legal services market potential. The analysis was a review of published financial information and budgets for 95 local authorities (CIPFA). It has been split between County Councils, London Boroughs, Metropolitan, Unitary and District Councils.

Type of Authority	Gross Expenditure £m	Number of authorities	Average Expenditure £m
London Borough	46.3	16	2.9
Metropolitan District	29.1	13	2.2
Unitary	33.7	18	1.9
County	34.1	11	3.1
District	12.9	37	0.3
TOTAL	156.1	95	1.6

Source CIPFA 2012/13

77. The average gross expenditure for London Boroughs, Metropolitan District Councils, Unitary Authorities and County Councils ranges between £1.9m and £3.1m, which is in marked contrast to District Councils where gross expenditure average is only circa £300k. It raises questions as to the continued viability of services at district level where they do not have the critical mass or economies of scale of the larger organisations. The figures do not identify how much of this expenditure is with external legal firms.
78. As the large majority of district legal services are still in-house there is an opportunity to provide services to them as an alternative to the alternative private sector practices, which are generally more expensive. It may also be possible to provide the full service to through mergers and expansion of the shared service.
79. Although the climate for public sector legal services is challenging it also offers opportunities for the more adventurous, motivated and strategic services to prosper.

Competition from the Private Sector

80. Historically, private sector law firms have a strong presence in the local authority and the wider public sector, both in specialist and non-specialist areas. This is understandable for specialist advice that is not within the capabilities of an in-house team or significant enough to warrant a higher level of advice. In addition, for some organisations, outsourcing to private firms is a routine method of managing demand when they have capacity issues.

81. The challenge from the private sector to any shared legal service will be significant, as they will have established client bases, a proven track record in niche markets and a determination to retain their client base. A number of key players also feature regularly in surveys and analyses of the top performing public sector legal firms, which give them a high market presence.
82. However a shared service with a strong public sector record and ethos has the potential to make inroads in this market segment with reasonable pricing and a responsive service.

Competition from the Public Sector

83. A number of other authorities have established or are in the process of establishing law firms or traded shared services and these will inevitably be in competition with each other in due course. However may be opportunities in the future for further merger where this is in mutual interests of the owner authorities.
84. In addition, there remains a large potential market opportunity both within local authorities and the wider public sector. For example there are some 268 GP Commissioning Consortia and over 1700 Housing Associations, with an annual spend of £63.4bn and £13bn respectively (Source: theguardian.com).
85. A shared service with sufficient size and with appropriate systems and experience in the traded provision of legal services will be in a strong position to successfully bid for contracts as they become available.

Recommended Way Forward

86. On the basis of the analysis of the existing CBC legal service which highlights the following relevant factors:-
 - Its proximity to other established shared legal services;
 - Limited experience of marketing and trading services in a competitive environment;
 - The need for significant development and enhancement of existing systems and processes in order to establish itself as a law firm;
 - The significant potential to develop trading activity due to its highly competent and versatile workforce;
 - The need for savings of £240k to be delivered in 2016-17 without materially impacting upon existing service levels;
 - The need to safeguard existing service levels to the in-house service users.

87. The above factors support the conclusion that the move to a shared service model involving the move to full service integration is the most likely approach to deliver the necessary financial results without impacting upon service levels.

Council Priorities

- Enhancing your local community – creating jobs, managing growth, protecting our countryside and enabling businesses to grow.
 - Improved educational attainment.
 - Promote health and well being and protect the vulnerable.
 - Better infrastructure – improved roads, broadband reach and transport.
 - Great universal services – bins, leisure and libraries.
 - Value for money – freezing council tax.
88. This proposal would achieve cashable savings with no reduction in quality leading to greater value for money.

Legal Implications

89. The recently enacted Public Contract Regulations 2015 updated and to some extent reformed the previous regulations which had been in place for many years. One of the key developments in the relevant case law had involved the increasing use of shared services amongst bodies within the public sector. The courts had demonstrated a willingness to enable this public to public cooperation by exempting inter municipal cooperation from the requirements in certain circumstances.
90. The two main exemptions had become known as the Hamburg and the Teckal exemptions after the names of the cases in which the principles had been established by the European Court of Justice.
91. These exemptions have now been formally recognised within UK law in the new Public Contract Regulations³. In summary, where the local authority is an owner or part owner of the provider organisation or exercises a significant influence over it, there is no private sector ownership and the bulk of its activity is undertaken for the owning/controlling bodies, the procurement of services from it is exempt from the requirements of Public Contract Regulations.
92. In addition to these exemptions the use of powers of delegation between local authorities, as enabled under the Local Government Act 1972, has also been used as a basis for obviating the need for a full procurement

³ S.13 Public Contract Regulations 2015

process because it is argued that delegation of a function is materially different to a procurement of services from a provider.

93. It should be noted that because the current Monitoring Officer and Assistant Director for Legal Services is also the manager of one of the potential bidders the Council has sought independent legal advice on the way forward from an external lawyer, who is advising the group of officers, led by the Director of Improvement and Corporate Services, who are putting together this proposal.

Financial Implications

94. The financial implications are as set out in this report.

Equalities Implications

95. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Council employs a Policy Adviser to lead on these requirements and this role is not affected by the current proposal.
96. The Legal Services Team provide advice, as and when required relating to employment law and equality issues. On a few occasions, external legal advice has also been sought related to specific service development related proposals. The development of a shared service proposal might help reduce the need to seek external legal advice.
97. Any transfer of council staff would be handled in accordance with the Managing Change Policy which takes full account of equality requirements related to employees.

Background Papers

The following background papers, not previously available to the public, were taken into account and are available on the Council's website:

None.