

Ward: All

## Proposal for a Shared Legal Service – Update

### Report by the Director of Digital and Resources

#### 1.0 Summary

- 1.1 As part of the response to the current and future changes and challenges faced by Local Government, Adur and Worthing Councils are currently examining options for delivering legal services differently, by joining with others to create a service that offers legal service provision to other Local Authorities and public service organisations.
- 1.2 On December 2<sup>nd</sup> 2014, Joint Strategic Committee received a report on the proposals which recommended the creation of a Company, together with Aylesbury Vale District Council (AVDC) and the Improvement and Efficiency Social Enterprise (iESE) to provide a shared legal service to the Councils and to other Local Authorities and public bodies. Joint Strategic Committee approved the proposal to progress to “full business case development”, directing that the business case also include the examination of a number of other options as described below:
- Maintaining the existing in house service
  - Extending the existing shared legal service to other Local Authority partners, under a lead provider with staff either TUPE transferring to one authority, or being seconded, and the legal function being delegated by one authority to another. This could be achieved via a commercial contract arrangement.
  - Joint commissioning from an external party
  - Joint commissioning from a partner
- 1.3 Work is currently in progress by a project team comprising officers from Aylesbury Vale, Adur & Worthing and iESE to develop the business case and a report is now expected to be taken to Joint Strategic Committee on March 31<sup>st</sup> 2015, seeking a recommendation to both Councils in April 2015.
- 1.4 At the time of writing the independent legal advice commissioned by iESE on behalf of the project team, which is required to resolve some key questions, has not been received.

Advice has been sought upon several fundamental issues including:

- Whether iESE can be deemed to be a ‘public body’, as the law only allows the Councils to form a ‘Teckal Company’ with other public bodies;
- Whether the New Company will require licensing and regulation with the Solicitors Regulatory Authority (SRA) to carry out legal activities for its LA owners and/or for other public bodies

- Whether lawyers employed by the New Company (“NewCo”) will continue to be exempt from many of the SRA framework rules as they are now by virtue of being employed by a Local Authority
- Whether lawyers employed by “NewCo” will continue to be exempt from the professional indemnity rules as they are now by virtue of being employed by a Local Authority.
- Whether “NewCo” can benefit from legislation providing a power to Local Authority’s to appoint non qualified legal officers to represent them in Court, ensuring cost effective use of legal resources
- Employment rights, including pension provisions, relating to transfer of staff to the New Company under the Transfer of Undertakings Regulations (TUPE).
- The ability of the proposals to satisfy the Councils legal obligations relating to the achievement of Best Value.

1.5 As a separate exercise, the Solicitor to the Council and Monitoring Officer at Adur and Worthing Councils is currently undertaking a review of the legal service in respect of the supply and demand of services, exploring areas of work that could be done differently, either by providing better self-service information, enabling clients to undertake specific lower level duties or moving specific non-legal functions into other council teams. A staff consultation on these changes will be initiated in April 2015, regardless of the outcome of the Shared Legal Service proposal.

## **2.0 Background**

2.1 Adur & Worthing, Aylesbury Vale and iESE share an ambition to create a shared legal service which other public sector bodies (including, but not limited to, other local authorities) could buy legal services from or could potentially join as partners themselves. Initial work indicated that a number of options existed and that the creation of a Teckal company with a ‘membership’ model was a particularly interesting, innovative vehicle, worthy of exploration.

2.2 The partners’ aims were to make the SLS independently financially viable, and to this end, it was proposed that a detailed, substantiated, business case was prepared, before any substantive decisions were made. The Project Team, led by the Director for Digital and Resources locally, proposed bringing a further report to Members in February 2015 (now March 2015), with a business case analysis of the option proposed in December, along with sufficient comparative analysis of alternative options to make an informed decision.

2.5 It was proposed that iESE’s involvement would be as an equal owner of the new SLS. This partnership was considered of merit due to iESE’s key position in the ‘public sector family’ as a catalyst for transformation. iESE had indicated that they could be instrumental in bringing in new members to the SLS, and that they had already been approached by several other local authorities interested in becoming members.

2.7 It was envisaged that the service would be delivered remotely as far as practicable with significantly reduced on site legal provision. Following a business transformation process and the Councils new ways of working project, most staff in the existing service are ‘flexible workers’ and routinely work remotely for some hours each week. The success of a remote service would also be critically

dependent on further digitising of business processes, reliable IT provision, remote telephone access, and video conferencing facilities being available from the outset. At present, the Council's digital programme is expected to deliver many of these essential services before the proposed date of September 1<sup>st</sup> 2015 for "NewCo".

- 2.8 At Joint Strategic Committee a public question was raised concerning the risk to no-cost and low-cost legal service provision that the legal team currently provides on occasions and reassurance was given that this would be considered in the full business case.
- 2.9 A further question was raised as to the inability of "NewCo" to delegate authority to legal assistants to attend court, something the current service is able to do. It was agreed in the answers given (attached at Appendix B) that this would also be carefully considered in the full business case.
- 2.10 A question was also raised around the limitations of Teckal as a vehicle, which places a restriction on the service such that it can only undertake 20% of its business for non-members. This is also being considered carefully in the business case.
- 2.11 Further concerns were raised around the requirements for professional regulation and licensing of "NewCo", by the Solicitors Regulatory Authority.

### **3.0 Proposals**

- 3.1 A high level options appraisal for the SLS was prepared for JSC, produced by iESE and is attached at Appendix 1 to this report. The options appraisal considers the range of feasible strategic options open to the partners and assesses them in terms of their deliverability.
- 3.2 The options considered include:
- Maintaining the existing in house service
  - Establishing a shared legal service under a lead provider with staff TUPE transferring to one authority, and the legal function being delegated by one authority to another.
  - Joint commissioning from an external party
  - Joint commissioning from a partner
  - Joint Council and iESE owned Company
- 3.3 An initial appraisal was undertaken against the assessment criteria drawn from the vision of the partners. This identified the Joint Council owned company as the preferred option, most likely to achieve the vision.
- 3.4 The preferred option of the partners as a result of the initial work was to create a joint Council and iESE owned Company. An external Company would normally be required to comply with procurement legislation in obtaining a public service contract and would need to competitively tender for the Council's legal work. However, there is an exemption to the procurement regulations where such a Company is owned and controlled by the local authority, which establishes that provided at least 80% of work undertaken is for the local authority owner, and certain other conditions are met, no procurement process is required. This is known

as 'the Teckal exemption'. It was proposed that the 4 partners (iESE, AVDC, ADC & WBC) create and jointly own a separate legal entity which would provide legal services back to its 'parent owner' and to others. This would be a 'Teckal company' and therefore would always have to provide at least 80% of its work for its owners (initially iESE, AVDC, ADC or WBC) so there may be a limitation on growth. SRA regulation as an Alternative Business Structure (ABS) would almost certainly be required for the Company to undertake legal work for anyone other than its parent owners, but may be required in any event for "NewCo" to operate at all and undertake any legal work for anyone; further advice is awaited on this point.

3.5 A decision in principle was sought and secured to progress with the project to develop a full business case to answer:

- potential for SLS to deliver high quality, responsive, resilient and flexible legal services
- potential to deliver cashable benefits / financial viability
- market testing of demand for the service from other public bodies
- provision of reliable digital resources to enable agile working
- recruitment of staff, which may lead to redundancies and/or TUPE transfer arrangements
- financial arrangements including the requirement for separate accounts, VAT issues and banking arrangements for a Company
- issues surrounding SRA authorisation
- pension arrangements and other terms and conditions
- the terms of any 'sunset agreement' in respect of accommodation and support services
- any State Aid and procurement issues that may arise
- any investment provision from the Councils to the Company and its ability to raise finance
- Governance arrangements of the Company, appointment of Directors, shareholders agreements, Articles of Association.
- professional indemnity insurance considerations

## 4.0 Legal

4.1 Section 111 Local Government Act 1972 provides that the Council shall have the power to do anything (whether or not involving expenditure, borrowing, or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to the discharge of their functions. Legal Services would be deemed an ancillary function in accordance with this provision.

4.2 Section 1 Localism Act 2011 provides for the general power of competence and empowers local authorities to do anything which individuals generally do. This power would enable the Council to, jointly with others, create a Company.

4.3 It would be necessary for the Councils to give an explicit delegation of its legal services function to "NewCo" under s101 Local Government Act 1972.

4.4 The Councils have a duty to obtain best value for their services. This requirement will need to be satisfied when the detailed business plan is considered.

- 4.5 Section 223 Local Government Act 1972 and section 60 County Courts Act 1984, allows Councils to appoint staff who are not qualified lawyers to be Court Officers and represent the Councils in Magistrates and County Court, ensuring the most cost effective level of legal resource is deployed for such work. It is unlikely that “NewCo” as an employer could exercise this power provided to Local Authorities.
- 4.6 In the case of *Teckal Sri v Commune di Viano* [1999] ECR 1-8121 it was established that a contract let to a third party will not count as a public service contract under the Public Contracts Regulations 2006 if the local authority exercises over the company concerned a control which is similar to that which it exercises over its own departments (known as the control test) and, at the same time, that company carries out the essential part of its activities with the controlling local authority or local authorities (known as the function test). Case law and the 2015 Procurement Regulations have established that ‘the essential part of its activities’ would require the Company to undertake at least 80% of its work for its parents; WBC, ADC, iESE (not including other iESE members) and AVDC. Should the control and function test not be met, the Company would need to comply with procurement legislation and tender competitively for a contract to undertake the Council’s legal work.
- 4.7 “NewCo” would be a separate legal entity and staff employed by it providing legal activity must be regulated and licensed by the SRA. An exception to this is provided at section 15(4) of the Legal Services Act 2007 which provides that where an employee carries on legal activity as part of the organisation’s business, it does not amount to reserved legal activity unless the services are provided to the public or a section of the public. If the Company provided a legal service to other local authorities, public bodies and others, this would be likely be seen as providing services to a section of the public, and would therefore require authorisation by the SRA as an ABS.

This legislation has not as yet been tested by the Courts, and the legal press and external specialist lawyers are expressing widely differing interpretation of the legislation. Some express the view that a Teckal company that is wholly owned and controlled by its parent local authorities could probably provide services on behalf of those parent local authorities without seeking authorisation from the SRA, but that if the object of transferring the business to a new vehicle is to secure third party work and if indeed the company seeks to market its services to other public authorities and other organisations, then it is likely to be offering to undertake reserved legal activities to the public or a section of the public, and would require SRA regulation as an ABS. Others express the view that a Teckal company would require such SRA regulation by virtue of its ability to provide legal activity to public bodies and organisations other than its owners, regardless of whether it exercised that ability or not. Further advice has been sought on this critical point.

- 4.8 Section 14 Legal Services Act 2007 provides that it is a criminal offence to carry on a reserved legal activity where someone is not authorised by the SRA or exempt under the legislation. In this connection offences may be committed by any individual undertaking reserved legal activity and their employing organisation. Since there are criminal offences for breach of these provisions, the stakes are high both for the individual employees, the Company, and the risk of potential reputational damage to the Councils.

## **5.0 Financial implications**

5.1 We await the full business case for details of the estimated costs of transition.

## **6.0 Recommendation**

6.1 Joint Overview and Scrutiny Committee is recommended to:

- note the contents of the report and its appendices;
- make comment or recommendation to the Joint Strategic Committee as appropriate ;
- request an update following the presentation of the full business case to Joint Strategic Committee on March 31<sup>st</sup> 2015

## **Local Government Act 1972**

### **Background Papers:**

Report to Joint Strategic Committee on 2<sup>nd</sup> December 2014

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## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 This proposal aligns with the Catching the Wave priority of “adaptive councils”, seeking to transform services, driving efficiencies and examining opportunities for revenue generation.

### **2.0 Specific Action Plans**

- 2.1 This project is detailed in the Surf’s Up Action Plan

### **3.0 Sustainability Issues**

- 3.1 None identified

### **4.0 Equality Issues**

- 4.1 None identified

### **5.0 Community Safety Issues (Section 17)**

- 5.1 None identified

### **6.0 Human Rights Issues**

- 6.1 None identified

### **7.0 Reputation**

- 7.1 In any period of change and uncertainty for staff, there is a risk to service quality. The Director is holding regular informal consultation meetings with the whole staff group to ensure good communication.

### **8.0 Consultations**

- 8.1 Communication has been received from Unison in respect of the proposals, and consultation will take place with existing staff, Unison, and internal client departments.

### **9.0 Risk Assessment**

- 9.1 The full business case is a vital step in assessing the benefits and risks of the proposal

### **10.0 Health & Safety Issues**

- 10.1 No issues identified

### **11.0 Procurement Strategy**

- 11.1 No issues identified

## **12.0 Partnership Working**

- 12.1 The proposal seeks to promote and extend partnership working, with Aylesbury Vale District Council and iESE initially but the aspiration is for “NewCo” to grow to encompass other Local Authorities as owners of the Company over time.



Ward: All

**Proposal for a Shared Legal Service – Proceeding to develop a full business case**

**Report by the Director for Digital and Resources**

**1.0 Summary**

- 1.1 As part of the response to the current and future changes and challenges faced by Local Government, Adur and Worthing Councils (A&W) and Aylesbury Vale District Council (AVDC) share an ambition to take new and transformational approaches to service provision in order to manage costs while increasing resilience and service quality. With this in mind the Councils wish to explore with iESE the options and viability of creating a new Shared Legal Service (SLS).
- 1.2 A review which seeks to examine the possible options, assess and evaluate the economic business case, provide recommendations and produce a route map for implementation has commenced and is ongoing.
- 1.3 This report provides Members with an options appraisal, recommends a preferred option, and seeks a decision in principle.
- 1.4 If Members are agreeable, the project work will continue, with a full business case being brought to Members of the Joint Strategic Committee in February 2015.

**2.0 Background**

- 2.1 The ambition of the Partners (A&W, AVDC & iESE) is to create an innovative form of shared legal service (SLS) which other public sector bodies (including, but not limited to, other local authorities) could buy legal services from or could potentially join as partners themselves.
- 2.2 The objective of forming the SLS would be for Adur and Worthing Councils to have access to high quality, responsive and enabling legal advice, and for the service to deliver cashable benefits to the Councils.
- 2.3 It is anticipated that the SLS will seek to partner with a private sector law firm to explore new areas of commercial work, where profitable, and where permissible by legislation governing the SLS's vehicle.
- 2.4 The aim is to make the SLS independently financially viable, and to this end, it is critical that a detailed, substantiated, business case is prepared, before any substantive decisions are made. The Project Team, being led by the Director for Digital and Resources, therefore propose bringing a further report to Members in

February 2015, with a business case for the preferred option. The business case will set out costs, share of costs, and investment required.

- 2.5 The aim of the SLS is that it produces cashable benefits for the Councils. The SLS will be non-profit making and any surplus income will be shared between members equitably either to reduce the costs of the service or returned to the member authority.
- 2.6 It is proposed that iESE's involvement is as an owner of the new SLS. This partnership is of merit due to iESE's key position in the 'public sector family' as a catalyst for transformation. iESE have indicated that they can be instrumental in bringing in new members to the SLS, and that they have already been approached by several other local authorities interested in becoming members.
- 2.7 It is envisaged that the service would be delivered remotely, with little on site legal provision. Following a business transformation process and the Councils new ways of working project, most staff in the existing service are 'flexible workers' and routinely work remotely for some hours each week. The success of a remote service would also be critically dependent on digital business processes, reliable IT provision, remote telephone access, and video conferencing facilities, being available from the outset.
- 2.8 Through service planning over recent years, it has also been ensured that the staff resource is being used efficiently, that salaries are commensurate with skills and knowledge, and that work is allocated to staff at the most cost effective appropriate level.
- 2.9 The current service is available outside of standard office hours, with staff being available between 7am and 8pm, and later by arrangement. The new service would be also be available to meet customers needs.
- 2.10 The existing service uses combined buying power to drive down prices for any external services bought in, by using the Sussex Framework Agreement and Sussex Training Consortium, where preferential rates have been achieved by combining with other Sussex authorities. The new SLS will also use its combined buying power with its partners to attempt to reduce costs.
- 2.11 iESE have supported the project stage to date and have written the attached options appraisal at appendix 1. The cost of iESE's support in establishing the service will be recovered from savings delivered by the service. There is also the possibility of iESE providing back office support functions to the SLS in due course, if this complies with procurement requirements and the duty to obtain best value.

### **3.0 Proposals**

- 3.1 An options appraisal for the SLS has been prepared and produced by the Project Team led by iESE and is attached at appendix 1 to this report. The options appraisal considers the range of feasible strategic options open to the partners and assesses them in terms of their deliverability.
- 3.2 The options considered include:

- Maintaining the existing in house service
- Establishing a shared legal service under a lead provider with staff TUPE transferring to one authority, and the legal function being delegated by one authority to another.
- Joint commissioning from an external party
- Joint commissioning from a partner
- Joint Council and iESE owned Company

3.3 An initial appraisal was undertaken against the assessment criteria drawn from the vision of the partners. This identified the Joint Council owned company as the preferred option, most likely to achieve the vision.

3.4 A further appraisal was undertaken and an assessment made of the likely ease, speed, cost and assurance of delivery and the potential time to realise benefits. This resulted in the shared legal service under a lead provider option being the most deliverable. However, considering the advantages of the joint council owned company, it was concluded that the deliverability assessment should not negate the primacy of the preferred option, whilst recognising that it will affect the implementation.

3.5 The preferred option of the partners is to establish a joint Council and iESE owned Company. It is proposed that the 4 partners (iESE, AVDC, ADC & WBC) create and jointly own a separate legal entity which would provide legal services back to its 'parents' and to other local authorities and public bodies. This would be a 'Teckal' company which would be owned and controlled by the local authorities. The benefit of such a company is that it would not need to comply with procurement legislation in undertaking work for its owners. The limitation upon such a company is that it must provide at least 80% of its work for either iESE, AVDC, ADC or WBC, and therefore has limited opportunity to provide services to others. However, in the medium term the new service could not undertake any work for anyone other than its parent owners, until such time as it obtained authorisation from the Solicitors Regulatory Authority as an Alternative Business Structure (ABS); without which the Solicitors would not be licensed to provide a legal service to anyone other than the parent owners of the Company. An assessment of the timescales for achieving ABS status will be given in the full business case.

3.6 A decision in principle is being sought to progress with this project to develop a full business case to answer:

- potential for SLS to deliver high quality, responsive, resilient and flexible legal services
- potential to deliver cashable benefits / financial viability
- market testing of demand for the service from other public bodies
- provision of reliable digital resources to enable agile working
- recruitment of staff, which may lead to redundancies and/or TUPE transfer arrangements
- financial arrangements including the requirement for separate accounts, VAT issues and banking arrangements for a Company
- issues surrounding SRA authorisation
- pension arrangements and other terms and conditions

- the terms of any 'sunset agreement' in respect of accommodation and support services
- any State Aid and procurement issues that may arise
- any investment provision from the Councils to the Company and its ability to raise finance
- Governance arrangements of the Company, appointment of Directors, shareholders agreements, Articles of Association.
- professional indemnity insurance considerations

3.7 The partners are keen to start working together and realising the potential benefits at the earliest opportunity. It is therefore proposed that there be a transitional stage of working together before the preferred option may be implemented.

3.8 It is proposed that in Spring 2015 legal services staff be seconded from one Council to another to enable them to undertake legal work for each other, to ensure that momentum is maintained whilst the commercial, financial, regulatory, legal and logistical arrangements are resolved. This would be for a short period with the objective of, should the business case support it, and Members approve it, establishing a Teckal Company with the partners in September 2015.

#### 4.0 Legal

4.1 Section 111 Local Government Act 1972 provides that the Council shall have the power to do anything (whether or not involving expenditure, borrowing, or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to the discharge of their functions. Legal Services would be deemed an ancillary function in accordance with this provision.

4.2 Section 1 Localism Act 2011 provides for the general power of competence and empowers local authorities to do anything which individuals generally do. This power would enable the Council to, jointly with others, create a Company.

4.3 As legal services is a function of the Council, it would be necessary for the Councils to give an explicit delegation of its legal services function to any such Company.

4.4 The Councils have a duty to obtain best value for their services. This requirement will need to be satisfied when the detailed business plan is considered.

4.5 Section 223 Local Government Act 1972 allows Councils to appoint staff (who are not qualified lawyers) to be Court Officers and undertake litigation on behalf of the Council. The new Company would not have this power and would therefore be likely to have to deploy higher levels of staff resources (ie Solicitors) for routine legal work, whereas the Council currently appoint unqualified staff to undertake such work.

4.6 In the case of *Teckal Sri v Commune di Viano [1999] ECR 1-8121* it was established that a contract let to a third party will not count as a public service contract under the Public Contracts Regulations 2006 if the local authority exercises over the company concerned a control which is similar to that which it exercises over its own departments (known as the control test) and, at the same time, that company carries out the essential part of its activities with the controlling local

authority or local authorities (known as the function test). Case law and the recent procurement Directive has established that 'the essential part of its activities' would require the Company to undertake at least 80% of its work for its parents; WBC, ADC, iESE (not including other iESE members) and AVDC. Should the control and function test not be met, the Company would need to comply with procurement legislation and tender competitively for a contract to undertake the Council's legal work. A Teckal company would therefore have limited opportunity, as it would only ever be able to carry out a maximum of 20% of its work for public bodies and local authorities other than its owners.

- 4.7 Where a separate legal entity is established and some or all of the staff transfer to that separate legal entity, then the provision of reserved legal activities by the employees of that alternative business structure must be regulated by the Solicitors Regulatory Authority. An exception to this is provided at section 15(4) of the Legal Services Act 2007 which provides that where an employee carries on legal activity as an employee of another organisation as part of the organisation's business it does not amount to reserved legal activity unless the services are provided to the public or a section of the public. If the Company provided a legal service to other local authorities, public bodies and others, this would be likely be seen as providing services to a section of the public, and would therefore require ABS authorisation by the SRA.

So a Teckal company that is wholly owned and controlled by its parent local authorities could potentially provide services on behalf of those parent local authorities without seeking authorisation from the SRA. However, if the object of transferring the business to a new vehicle is to secure third party work and if indeed the company seeks to market its services to other public authorities and other organisations, then it is likely to be offering to undertake reserved legal activities to the public or a section of the public, and without SRA authorisation as an ABS could be committing a criminal offence. Consequently until such time as the Company obtained SRA authority it could not provide any work to third parties.

- 4.8 Section 14 Legal Services Act 2007 provides that it is a criminal offence to carry on a reserved legal activity where someone is not authorised or exempt. In this connection offences may be committed by any individual undertaking reserved legal activity and their employing organisation. Additionally there is an offence where an organisation pretends to be entitled to carry out reserved legal activities where they are not entitled. There is a risk that any corporate vehicle established without ABS authorisation, that works for clients other than its parents and possibly iESE itself, could be challenged by the SRA as providing services to a section of the public. There is no interpretation at present of the expression "the public or a section of the public". Since there are criminal offences for breach of these and other provisions, the stakes are high both for the individual employees, the Company, and the risk of potential reputational damage to the Councils.

## **5.0 Financial implications**

- 5.1 As explained in 1.4, if Members are agreeable, the project work will continue, with a more detailed business case being brought to Members of the Joint Strategic Committee in February 2015.

As explained in 2.8 the aim is to make the SLS independently financially viable, and to this end, it is critical that a detailed, substantiated, business case is prepared, before any substantive decisions are made. The Project Team, being led by the Director for Digital and Resources, therefore propose bringing a further report to Members in February 2015, with a business case for the preferred option. The business case will set out costs, share of costs, and investment required.

## **6.0 Recommendation**

6.1 Joint Strategic Committee is recommended to:

- note the contents of the report and its appendix;
- agree to receive a further report and detailed business case in February 2015;
- agree in principle to change the way in which the Councils' legal service is provided, subject to Joint Strategic Committee approving the business case;
- agree to the implementation of the transitional arrangements of the Councils working together with iESE and Aylesbury Vale District Council, including the secondment of staff, as identified in appendix 1 of the report.

### **Local Government Act 1972 Background Papers:**

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## Schedule of Other Matters

### 1.0 Council Priority

1.1 Matter considered.

### 2.0 Specific Action Plans

2.1 Business Case to be developed

### 3.0 Sustainability Issues

3.1 To be addressed in business case.

### 4.0 Equality Issues

4.1 To be addressed in business case.

### 5.0 Community Safety Issues (Section 17)

5.1 Such issues could potentially be affected by the Council's legal service function being outsourced.

### 6.0 Human Rights Issues

6.1 Matter considered and no issues identified.

### 7.0 Reputation

7.1 There are reputational risks to the Council identified in the report, which should be considered.

### 8.0 Consultations

8.1 The Councils' Human Resources Officers will be undertaking a consultation process with staff affected.

### 9.0 Risk Assessment

9.1 This will be addressed in the business case.

### 10.0 Health & Safety Issues

10.1 To be addressed in business case.

### 11.0 Procurement Strategy

11.1 See section 4 of the report for procurement issues concerning the establishment of a Teckal Company.

### 12.0 Partnership Working

12.1 The report proposes partnership working with Aylesbury Vale District Council and iESE.

## Questions & Answers - Joint Strategic Committee 2 December 2014

### Proposal for a Shared Legal Service – Proceeding to develop a full business case – Item 13 on the agenda

The Legal Service is keen to see the continued success of the Councils. As your legal advisers and because we have an active interest in continued improvement, we feel obliged to raise relevant questions on the proposals contained in the Legal Services Report. We would like to assure members we are not averse to change, and confirm the changes arising from the merging of both councils have produced a knowledgeable and professional legal team. These questions are raised for clarification purposes.

1. It would appear from the report that only the preferred option of the Teckal Company, is to be the subject matter of a business case. Can the committee confirm that all the options contained in the report will be considered as part of the business case each option analysed to ensure the most advantageous outcome for the councils is achieved?

*ANSWER: An initial options appraisal has been undertaken which considered the following options: status quo, lead provider model, procuring services through an external party, joint commissioning from one partner and joint-owned company. The full business case will provide a more detailed assessment and refreshed 'benefits' scoring against the criteria used, and as the scoring model is relative, this will require the re-scoring of each option, with evidence provided.*

*The current preferred option, company status, will be more deeply evaluated in order to produce a full business case.*

2. IESE is the proposed joint owner of the Teckal and has itself prepared the report recommending the formation of the company. Can the committee please confirm that an independent advice will be taken on behalf of the Councils which analysis and considers fully :-
  - a) The business case on each proposed option and
  - b) The formation of a Teckal Company with a non-local authority partner?

*ANSWER: The business case will be produced and evaluated by all contributing partners, including a process of consultation with staff, and will require approval from the cabinets and board of each organisation. Independent legal advice has been sought already where needed and this approach will be maintained in order to guard against any potential conflicts of interest. The question as to whether a Teckal company may be formed with a non-local authority provider is unresolved and will be addressed in the full business case.*

3. An IT system with fast reliable connections is essential for an efficient company, more so when staff rely on remote working to underpin their productivity. As the expected benefits of changes to IT will be levered in over 2-3 years, will the IT systems be good enough in September 2015 for us to set up a new company? Has this been considered?

*ANSWER: This is a crucial part of the proposal and will be fully considered in the full business case. Business/practice managers will be asked to contribute their expertise. Adur and Worthing have recently developed a cloud platform strategy so it is currently considered feasible that this can be achieved. An IT investment case will be needed as part of the proposal.*



4. In a private law firm, a Solicitor's hourly rate will range between £180 and £250 plus VAT although the profit incurred by the firm will be low, free pro-bono work is a rarity and usually only when there is a commercial value in carrying it out. Many law firms continue to go bust, finding they can no longer realistically or commercially jump through the hoops of intense regulatory pressure, the additional costs of compliance and extortionate indemnity insurances. All the things which an in house service is presently protected from. If legal services are outsourced to a company required to be self-sufficient, are Members aware that there will be an impact on the large amount of low cost or no cost legal work currently carried out by legal services which benefit the social sector and many community groups? How would Members address this issue?

*ANSWER: The preferred proposal is not to out-source, but to create a joint council owned company with a 3-5 year 'lock in' agreement (to be confirmed in the full business case) meaning the partners will commit to working with the new company for that period as a minimum. We will ensure that the work undertaken at low cost or no cost, and the important community benefits (social value) of this, are factored into the full business case.*

5. There will inevitably be some disconnection arising from the proposed remote working with a lack of the beneficial daily face to face contact with colleagues, Members, and instructing officers. Do the Members consider this may potentially impact on the quality of legal advice given? Legal services shall be more reliant on communicated well drafted instructions, losing the benefit of additional information which arises naturally from daily contact. Will the client departments be consulted on the proposed changes and if yes at what stage will that consultation occur?

*ANSWER: Production of the full business case will certainly necessitate consultation with client departments and evidence of this activity will be provided. The options appraisal presented to Joint Strategic Committee on December 2<sup>nd</sup> 2014 included an assessment of work types and the balance of 'on-site' and remote work thought feasible (para 6.5 of the appendix). This will be re-assessed in light of the technology options that come forward during the project and through further consultation with legal services officers.*

6. Legal services are excited for future changes and streamline services with Aylesbury but wish to highlight the following: By moving from working within the provisions of the Local Government Act to a Teckal company, this will mean a loss of flexibility to our excellent service already provided.

For example, currently a Legal Assistant can be delegated under the Local Government Act to attend County Court and Magistrates Court. This tool is very useful especially taking into consideration the frequency of incursions of travellers that Adur and Worthing experience and for work such as debt recovery and housing possession work for Adur Homes.

In future, only Solicitors will have rights of audience in Court and therefore be able to carry out this work for the company, thus a loss of flexibility to our excellent service.

How will a company or Teckal company in the future be able to meet our current service and provide the same, if not better service?

*ANSWER: A separate paper to Joint Strategic Committee on December 2<sup>nd</sup> (Item 12) recommended that functions be delegated, in so far as they relate to the enforcement of*

*unlawful gypsy and traveller encampments, to West Sussex County Council and this was approved. The remaining implications around the inability of legal assistants to attend court is a very important matter in relation to cost effectiveness of the service and will be considered in the full business case.*

7. A Teckal company is limited to carrying out only 20% of its total work for non-members of that company, whereas under present legislation a local authority can carry out any amount of work for any public body. Given that benefit, and the potential costs of the Teckal company would it not be preferable to make improvements to our existing in house service, become more entrepreneurial, and market ourselves as a centre of excellence?

*ANSWER: A key feature of the preferred option is the potential for growing the full membership of the company by recruiting other councils - greatly enhanced by the potential of iESE to introduce new members from its member network of [27 local authorities](#) and beyond. Because growth and efficiency is expected from this arrangement, a Teckal vehicle is currently considered appropriate and would fulfil the values and vision of the joint council-owned company.*