

 <p>WEST OXFORDSHIRE DISTRICT COUNCIL</p>	<p>WEST OXFORDSHIRE DISTRICT COUNCIL</p>
<p>Name and date</p>	<p>CABINET - 13 JULY 2022</p>
<p>Report Number</p>	<p>AGENDA ITEM No 6</p>
<p>Subject</p>	<p>Review of Legal Services, Interim Monitoring Officer Arrangement and Retained Officer Structure</p>
<p>Wards affected</p>	<p>All</p>
<p>Accountable member</p>	<p>Councillor Andy Graham, Leader; Email: andy.graham@westoxon.gov.uk</p>
<p>Accountable officer</p>	<p>Giles Hughes, Chief Executive Email: giles.hughes@westoxon.gov.uk</p>
<p>Summary/Purpose</p>	<p>For Cabinet to consider instigating reviews of the Council's legal services, and the interim monitoring officer arrangement and retained officer structure.</p>
<p>Annexes</p>	
<p>Recommendations</p>	<p>(a) <i>That Cabinet note the decision of Cotswold District Council on their commissioning review of legal services.</i></p> <p>(b) <i>That, subject to Cotswold District Council agreeing to remain party to the shared Cotswold/Forest of Dean/West Oxfordshire legal service, Cabinet supports the formalisation of the shared service under a Collaboration Agreement and Section 101 agreements, and a review of the shared service for economy, efficiency and effectiveness.</i></p> <p>(c) <i>That the Chief Executive undertake a review of the current interim monitoring officer arrangement and the retained officer structure, including interrelationships with the shared legal service and Publica, with recommendations from the review reported to Cabinet and Council as appropriate.</i></p>
<p>Corporate priorities</p>	<p>Modern Council Services and Sustainable Finance: Delivering excellent modern services whilst ensuring the financial sustainability of the Council</p>
<p>Key Decision</p>	<p>Yes</p>
<p>Exempt</p>	<p>No</p>

Consultees/
Consultation

Leader, Deputy Chief Executive, Monitoring Officer and Head of Legal
Services

1. BACKGROUND

Legal Service

- 1.1 Currently West Oxfordshire, Cotswold and the Forest of Dean District Councils share a joint legal service. The Service operates on an informal footing with all legal staff being made available by and to the other participants on a co-operative and collaborative basis. The staff are however retained by their employing authority for 'pay and rations' purposes. A mutual co-dependency has developed between the councils with each reliant on the other for legal service provision.
- 1.2 In July 2020 Cotswold District Council agreed that the then Group Manager for Legal Services should be allowed to take early retirement. The Group Manager was a Cotswold District Council employee. The current Interim Head of Legal Services is Susan Gargett. Cotswold District Council also resolved in July 2020 in principle to seek to join the One Legal Partnership with Tewkesbury Borough, Cheltenham Borough, Gloucester City and Stroud District Councils.
- 1.3 Cotswold District Council is currently completing a legal services commissioning review which assesses a proposal from One Legal alongside a proposal from the current shared legal team. Cotswold District Council's Deputy Chief Executive, who is charged with leading the review, is recommending that Cotswold District Council's legal service should continue to be provided by the shared legal team.
- 1.4 This review is due to be reported to Cotswold District Council's Cabinet on the 4th July 2022.
- 1.5 Cotswold District Council's Deputy Chief Executive is also recommending that the position of the shared service should be formalised under a Collaboration Agreement and Section 101 agreements, and that there is a review of the shared service for economy, efficiency and effectiveness.

Monitoring Officer

- 1.6 In February 2022 West Oxfordshire District Council resolved to designate Susan Sale as the Council's Monitoring Officer on an interim 12 month basis with effect from 1st March 2022. Susan Sale is also the Head of Law and Governance at Oxford City Council and is also designated as the Monitoring Officer for that authority. The arrangement is that Susan remains an employee of Oxford City Council whilst being seconded to West Oxfordshire District Council for the interim period, and she dedicates 2 days a week to the West Oxfordshire role. The agreement also includes executive support.
- 1.7 The law requires the Monitoring Officer to be an Officer of the Council, but not necessarily an employee, giving rise to lawful opportunity for shared Monitoring Officer arrangements.
- 1.8 Under section 5 of the Local Government and Housing Act 1989 the Council is required to appoint one of its officers to act as Monitoring Officer. The Monitoring officer is responsible to report to the council :
 - Any contravention of law or any code of conduct or practice made or approved by or under legislation
 - Any maladministration or injustice
 - Any matter which is likely to give rise to any contravention or maladministration
- 1.9 Additional responsibilities were delegated to the Monitoring officer under the Local Government Act 2000 and the Localism Act 2011 with regard to the operation of the Constitution and the promotion of ethical governance within the district and parish councils.

Retained Officer Structure

- 1.10 West Oxfordshire District Council directly employs a Chief Executive (Head of Paid Service), a Deputy Chief Executive/ Chief Finance Officer (Section 151 Officer), and two Lawyers/ Legal Executives who are part of the shared legal service. The Head of Paid Service and Section 151 roles are statutory roles that the Council is required to have.
- 1.11 There are also a number of officers with joint Publica/West Oxfordshire contracts which enable those officers to make delegated decisions on the Council's behalf.

2. MAIN POINTS

- 2.1 It is important that West Oxfordshire has access to an effective legal service. The Council provides a wide range of services in complex legal environment. While the current shared team has provided a cost effective service for the Council, the Cotswold District Council commissioning review has identified a number of areas for improvement.
- 2.2 The current shared Legal Service arrangements are based upon informal arrangements. The financial contributions which reflect the way the service now operates need to be incorporated within the legal documents which will underpin the service. The documents should include a Collaboration Agreement and S.101 arrangements. This will place the service on a more stable footing and protect the interests of the Council.
- 2.3 A service review should be carried out to ensure that the legal team are performing appropriate work, at the appropriate level, and are using systems and processes which optimise economy, efficiency and effectiveness. An important part of the review is to determine the appropriate resourcing for the team. It is suggested that this review be jointly carried out by Cotswold, Forest of Dean and West Oxfordshire District Councils, in conjunction with the Publica Group Manager for Organisational Development and Transformation.
- 2.3 The role of the Monitoring Officer requires a detailed knowledge of local government law and procedure. The current interim appointment was agreed to allow a wider consideration of the options for the Monitoring Officer role long term. Consideration needs to be given to whether the current 2 day a week arrangement is sufficient to meet the demands of this role. There is also the opportunity to consider how this role works with the other retained officers in taking forward the Council's priorities and to look at the options moving forwards.

3. FINANCIAL IMPLICATIONS

- 3.1 Cotswold District Council evaluated the One Legal partnership proposal against that from the current shared legal service on a range of factors including cost, although there was limited information on costs for the One Legal option. The current shared legal services scored higher overall.
- 3.2 The partner Council contributions to the cost of the shared legal service team, are summarised below. The contributions are based upon pay and grading changes which come in to full effect from April 2023 and current provision for supplies and services costs.

	Cotswold District Council	West Oxfordshire District Council	Forest of Dean District Council
Contribution	£217,429	£213,478	£167,383

- 3.3 The table below compares the current Council contributions, against an equal split of costs:

	Cotswold District Council	West Oxfordshire District Council	Forest of Dean District Council
Current Contribution	£217,429	£213,478	£167,383
Equal contribution	£199,430	£199,430	£199,430
Growth/(Saving)	(£17,999)	(£14,048)	£32,047

- 3.4 The table shows a potential saving for the Council on the assumption that costs are split equally, but if the service review confirms that investment is required in the legal services team, there would be a potential financial impact to add to the above.
- 3.5 External legal costs are in addition to the above and include court fees and external legal advice commissioned by legal services or directly by service areas.
- 3.6 A summary of external legal costs for the period 2018/19 to 2021/22 is set out below:

External Legal Costs 2018/19 - 2021/22 - Actual Spend						
	2018/19	2019/20	2020/21	2021/22	Total	Average (2019/20 - 21/22)
	£	£	£	£	£	
Cotswold District Council	39,661	43,772	34,633	44,663	162,728	41,022
West Oxfordshire District Council	33,657	11,399	16,348	19,612	81,016	15,786
Forest of Dean District Council*	84,758	40,034	35,461	36,330	196,583	37,275
	158,076	95,204	86,442	100,605	440,327	94,084
*Forest Locum Solicitor	77,225	22,146	0	0	99,371	7,382
Forest Other External Costs	7,533	17,888	35,461	36,330	97,212	29,893
	84,758	40,034	35,461	36,330	196,583	37,275

- 3.7 In order to ensure that external legal costs are managed it is important that the legal team control the commissioning of external legal advice. This needs to form part of a service review of legal services with a view to reducing spend on external legal advice.
- 3.8 The current monitoring officer arrangement costs £72,109 for the interim 12 month period.
- 4 LEGAL IMPLICATIONS**
- 4.1 The legal documents to underpin the shared service, such as a Collaboration Agreement and Section 101 arrangements should be completed to place the shared service on a sound footing.
- 4.2 As set out the Council is required to appoint one of its officers to act as Monitoring Officer.

5 RISK ASSESSMENT

- 5.1 A decision by Cotswold District Council to move their legal service to One-Legal would have significant implications for the legal services at both West Oxfordshire and the Forest of Dean District Councils.
- 5.2 The nature of the monitoring officer role is such that it needs to be responsive to issues as they arise. Therefore there is a risk that if a significant number of issues arise in a short time period that the capacity in the monitoring officer role may be overwhelmed. One of the mitigations to manage this risk is for the monitoring officer to appointment deputy monitoring officers, and the current monitoring officer's approach is to look to have two.

6 EQUALITIES IMPACT

- 6.1. No negative effect on different service users, customers or staff is expected from the implementation of the recommendations in this report.

7 CLIMATE CHANGE IMPLICATIONS

- 7.1 None from this report.

8 ALTERNATIVE OPTIONS

- 8.1 If Cotswold District Council decide to move their legal service to One-Legal that will have significant implications for the legal services at both West Oxfordshire and the Forest of Dean District Councils. In the event of a Cotswold decision to move to One-Legal there will be an implementation period to work through the arrangements before it takes effect. This will provide a period for both West Oxfordshire and the Forest of Dean District Councils to review their legal services.
- 8.2 In the event that Cotswold District Council did decide to move to One Legal the following options could be explored for West Oxfordshire:
- Shared service with Forest of Dean
 - Shared service with other Council(s)
 - In house West Oxfordshire service

9 BACKGROUND PAPERS

- 9.2 The following documents are of relevance to this report:
- Publica Business Plan - 2020 to 2022; and
 - Publica Annual Report 2020-21;
 - Ten years of collaboration and sharing, Publica