

**NEW FOREST NATIONAL PARK AUTHORITY**

**RESOURCES AND PERFORMANCE COMMITTEE – 10 MARCH 2009**

**PROVISION OF LEGAL SERVICES**

**Report by:** Lindsay Cornish, Chief Executive

**Purpose:**

To seek a steer from the Committee on options for the future provision of legal services.

**Recommendation:**

1. That the Committee endorses the proposal to explore with Hampshire County Council a new successor arrangement for provision of legal services on a partnership basis.
2. That the Chief Executive be authorised to negotiate the terms of such an arrangement and report back upon this to the Committee for consideration, prior to adoption by the Authority, by the end of June 2009.

**Resources:**

The proposed budget for 2009/10 includes provision for cost of legal services of £150,000.

**Papers:**

**NFNPA RPC 76/09:** Report on provision of legal services

**Background Papers:** None

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**1 Purpose**

- 1.1 To seek a steer from the Committee on options for the future provision of legal services.

**2 Background**

- 2.1 Legal services to the Authority have been provided by Hampshire County Council's Legal Practice since the Authority became operational in April 2006. This arrangement is governed by a Service Level Agreement covering the period until 31 March 2009.
- 2.2 This arrangement grew from discussions between the two authorities in preparation for the Authority becoming operational. The County Council was asked if it may be able to assist the Authority by providing its legal support, and a proposal was developed which was subsequently agreed.
- 2.3 The arrangement provides for support in certain core areas of activity, as follows:
- 2.3.1 the responsibilities of Monitoring Officer and Deputy Monitoring Officer, advice on governance issues and general public law. This includes attendance at and advice to full meetings of the Authority and Standards Committee;
  - 2.3.2 advice on planning functions, including attendance at and advice to Planning Development Control Committee; and
  - 2.3.3 advice on planning and environmental law with particular regard to statutory national park purposes.
- 2.4 This "core service" is provided by designated members of Legal Practice staff, one of whom is physically located at South Efford House on a minimum of three days per week. However, the Service Level Agreement also provides for support to be available in "non-core" areas where this is required e.g. employment law issues, property law matters, litigation, contracts and procurement. The Legal Practice is of sufficient size to be able to draw in staff with expertise in these areas to advise the Authority, or to access the necessary advice through existing links with external providers e.g. counsel, where required.

- 2.5 It was intended that this arrangement would assist the Authority through its initial period of becoming established and operational, and that before the expiry of the agreed period, options for future service provision would be reviewed.
- 2.6 In November 2008, the County Council commenced a fundamental review of its corporate and central services (including legal services). An interim report on the emerging outcomes from the review was considered by the Council's Cabinet on 22 December 2008, and a final report is due to be considered on 30 March 2009. As the corporate services review will have implications for the future structure and delivery of the service, it was felt that a decision on future arrangements for the Authority's legal services (one of which may be continuation of the joint arrangements) should await the outcome of the review. A temporary extension of the current Service Level Agreement, until 30 June 2009, has been agreed, therefore.

### **3 Options for future service provision**

#### *In-house provision*

- 3.1 Prior to the Authority becoming operational, consideration was given to the possibility of creating a post of in-house legal adviser. This was discounted for a number of reasons, including:
- i) difficulties in recruiting and retaining an individual suitably qualified and experienced in the variety of specialist legal areas in which needs arise
  - ii) concerns about sufficient cover being available in the event of sickness or other extended leave
  - iii) costs of providing the necessary "infrastructure" such as specialist legal reference materials and continuing professional development
  - iv) limited opportunities for development and career progression.
- 3.2 It is considered that all of these reasons remain equally valid, and this is not therefore recommended as an option for consideration.

#### *External provision under contract*

- 3.3 It would be possible to undertake a procurement exercise, inviting legal services practices to tender for a contract to be the Authority's legal services provider. The main advantage of this would be that, through testing the market, the Authority is able to satisfy itself that it is obtaining the best service achievable, in terms of service quality and value for money. Further, this would not exclude the possibility of the current relationship continuing, as the current provider could be included in the invitation to tender. The disadvantage would be the resource commitment upon Authority staff to undertake the necessary

procurement exercise. This would include preparation of a detailed specification as to the Authority's needs, along with the other tender documentation required, public advertisement, followed by a period of evaluation of the bids received, and further reporting to members for decision. In the event of there being a change in provider, transitional arrangements would need to be put in place. Further, the Authority would need to be guided in this process by the services of an external consultant with experience in procurement of legal services.

### **Joint provision**

- 3.4 This option would entail the Authority utilising powers available, under general local authority legislation, to enter into joint arrangements with another local authority for the provision of legal services to both authorities by the one internal provider "hosted" by one of the authorities. In effect, this would enable the current joint arrangements with the County Council to continue, should that be the wish of the Authority, without the resource commitment of undergoing a full tendering exercise. As the arrangement would be one of partnership between the two authorities, rather than the award of a contract for services by one to the other, there would be no requirement under the Authority's Standing Orders to undertake tendering. The disadvantage of this would be that the Authority would not have the evidence from its own (recently conducted) market testing exercise that the service it is procuring is the best available in terms of quality and value for money. However, comparative costs evidence does exist that may go some way to giving reassurance on this point.

## **4 Comparative costs information**

- 4.1 The Legal Practice participates in a benchmarking group with legal departments from other local authorities. Benchmarking information shows that the current costs of maintaining the in-house provision are similar to those of other comparable-sized authorities. Further, evidence from recent tendering exercises on certain projects shows that the hourly rates offered by private sector providers are in general in the region of two to three times those of the Legal Practice. This is largely because the in-house rates are calculated having regard to direct staffing costs and overheads, whereas the private sector's rates will include not only those factors, but also a sizeable profit element.

## **5 Corporate Services review of Legal Services**

- 5.1 As indicated previously, the County Council is undertaking a review of its corporate services, including legal services. The terms of reference of this review include an assessment of the alternative models that exist for the organisation of legal services within the Council and the costs, benefits and risks of such models. The review is also exploring the potential that may exist to pursue more shared arrangements with other authorities, in the interests of generating greater efficiencies.

- 5.2 Key Authority staff were invited to take part in the Stakeholder Survey part of the Review. This has provided the opportunity to give feedback on the current service, and offer information as to likely needs of the Authority for future legal support, for taking into account in the Review. The Review is still in progress, and will not be concluded until a final report is considered by the Council's Cabinet in late March 2009.

## **6 Comments of Chief Finance Officer**

- 6.1 The CFO has reviewed comprehensive benchmarking data for the County Council's legal services, and concluded that there is strong evidence that costs are substantially lower than would be likely were a private sector provider to be used instead. That is typical of a good practice local authority legal function, which the relevant benchmarking with other County Councils shows Hampshire to be. As such the most relevant competition might be obtained from another geographically suitable local authority legal practice. However, informal approaches have indicated that there is no interest from other suitably-placed authorities bidding for such work.

## **7 Analysis**

- 7.1 A tendering exercise is the most robust way in which to assess value for money, particularly where substantial expenditure is involved. It compares actual costs and to some extent can assess the quality of service which could be provided, although with any new provider there are risks over the extent to which quality can be tested through a tender process. Against this, as indicated at paragraph 3.3, the tendering process is itself a significant drain on resources and requires a degree of specialist knowledge. Moreover, the recent review of corporate services at the Council has provided some useful benchmarking data which illustrate that the cost of the service currently provided by the Council is on a par with that which would be available from other Councils in the area, and at a lower cost than use of private sector services. On balance, therefore, the benefits of undertaking a full tendering exercise as evidence of value for money, given the evidence already available from benchmarking, are outweighed by the resource commitment needed for the task and the distraction this would be from the other demands on the Authority's staff at present and in the near future.
- 7.2 While the final outcomes from the corporate services review are yet to be reported, local authorities generally are exploring the potential for joint arrangements - "sharing" service provision in the interests of securing greater efficiencies - and there may be benefits for the Authority in exploring the possibility for this within a new partnership arrangement with the County Council.
- 7.3 The benchmarking information in Section 4 above also suggests that there may be little to be gained in terms of value for money in moving to another local government provider and inevitably such a move would disrupt the smooth flow of business as the new provider gained an

understanding of the Authority's business. By contrast, the current legal services team has now developed a very good understanding of the business and the Authority's corporate objectives and culture and has developed good relationships with staff and members - receiving high satisfaction ratings in the regular customer feedback reports it commissions. This provides a solid platform for efficient future service delivery and further service improvement.

## **8 Conclusion**

- 8.1 Having regard to the above, it is concluded that the preferred option would be to explore with the County Council a new successor arrangement on a partnership basis. Due to the timeline for the Council completing its corporate services review, any discussions in this respect could not be concluded by the end of March 2009. However, the temporary extension, already agreed, to end of June 2009, should allow sufficient time for these discussions to be completed.

## **9 Recommendation**

- 1 That the Committee endorses the proposal to explore with the County Council a new successor arrangement for provision of legal services on a partnership basis.**
- 2 That the Chief Executive be authorised to negotiate the terms of such an arrangement and report back upon this to the Committee for consideration, prior to adoption by the Authority, by the end of June 2009.**