

Council

28 January 2016

Agenda Item 80

Brighton & Hove City Council

Subject:	Orbis Public Law- Proposals for the Establishment of a Shared Legal Service		
Date of Meeting:	28 January 2016 21 January 2016 – Policy & Resources Committee		
Report of:	Head of Law and Monitoring Officer		
Contact Officer:	Name:	Abraham Ghebre-Ghiorghis	Tel: 29-1500
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Ward(s) affected:	All		

FOR GENERAL RELEASE.**1. PURPOSE OF REPORT AND POLICY CONTEXT**

1.1 The purpose of the report is to set out proposals for the development of a shared legal service between Brighton & Hove City Council, East Sussex County Council, Surrey County Council and West Sussex County Council called “Orbis Public Law” and to seek authority for the implementation of the proposals, including the establishment of a company, subject to proper due diligence.

2. RECOMMENDATIONS:

2.1. The Policy & Resources Committee agrees:

- (i) To the creation of a new Legal Services partnership arrangement between Brighton & Hove City Council, East Sussex County Council, Surrey County Council and West Sussex County Council to be known as Orbis Public Law with effect from 1 April 2016, subject to due diligence.
- (ii) That a Business Case be developed for an Alternative Business Structure, in the form of a Limited Company approved by the Solicitor Regulation Authority, and to delegate authority to the Chief Executive, after consultation with the Monitoring Officer, the Section 151 Officer and the Head of HR, to establish such an ABS if he considers it appropriate.
- (iii) To delegate authority to the Chief Executive to take any action necessary or incidental to the implementation of the above including (but not limited to) agreeing and entering into the Articles of Association, shareholder agreement and an Inter Authority Agreement between the partner authorities

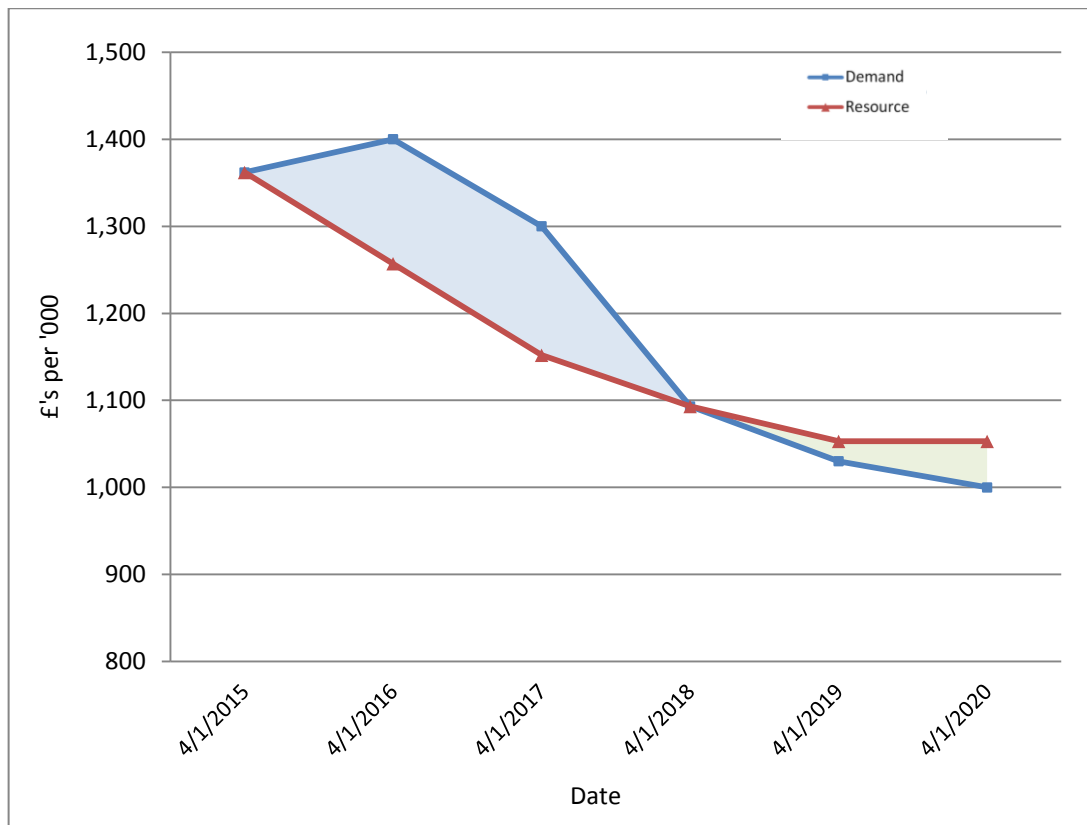
2.2. The Policy & Resources Committee recommends to Council:

- (i) The establishment of a Joint Committee as the governing body for Orbis Public Law to oversee the discharge of the Council’s Legal Services function;

- (ii) To agree the attached Terms of Reference (appendix 2) for the Joint Committee and to appoint Councillor Les Hamilton, Deputy Chair of P&R and Lead Member for Finance & Resources, to be a Member of the Joint Committee.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1. **The Current Service:** Brighton & Hove has a medium sized Legal Practice with around 30 FTE fee earners and 15 paralegal and business support staff. In VFM terms, it is a high performing low cost service. The total annual net budget for the service is £1.362 million. The CIPFA Benchmarking data for the previous 5 years indicates that the cost of the service has been at least below both the London and Unitary authority averages for that period. It also has consistently high customer satisfaction rates (98% good or excellent); has received commendations from Lexcel (Law Society Quality Assurance) for the last 3 years and was the first local authority practice to be accredited by Lexcel. It was one of the few local authority practices that was authorised by the Law Society to provide CPD accredited training in house. The service scores well against the Council's corporate KPIs in terms of low sickness levels and diversity (with high levels of staff from BME background, staff with disabilities and highest percentage of women in senior-above M8-positions in the Council.) It has won a number of national awards, including the recent ones for Governance Team of the Year and People Related Services Team of the year for 2015 from the Association of Local Government Lawyers.
- 3.2. The Service provides Legal and Monitoring Officer services to the Fire Authority and also does work for the CCG, local schools and Sussex Local Authorities under the Sussex inter-local authority agreement.
- 3.3. Although it is a high performing service, it is operating at near capacity level with limited resilience. The challenge in terms of capacity will be further accentuated over the coming years as the service has to deliver significant savings at the same time as when the demand for the service is likely to increase. This will, in particular, be the case during the first couple of years (2016-2018) when the Council implements a reduction in services, undergoes transformation and the likelihood of legal challenge is higher. There will be an increased need, at least in the short term, for safe but robust legal advice given that many of the decisions and choices we have to make will, of necessity, be pushing against the limits of what the law allows.
- 3.4. The following graph illustrates the projected gap between available resources and the likely demand for the service between 1st April 2016 and 1st April 2020. This suggests that capacity and resilience will continue to be a challenge until most of the changes (delivery models, service redesign, changes to levels of services etc.) have bedded down and the council services are in a more settled position, likely to be after 2018.



- 3.5 **Options appraisal:** Given the above, an options appraisal was undertaken which looked, in particular, at the option of remaining as an in-house service, outsourcing, shared services (Orbis) and shared services (Greater Brighton). Although an option appraisal based on a 15% saving over 4 years supported the in-house option, when the savings were increased to 30% (as with the overall corporate position) this option seemed to lack resilience.
- 3.6 The Council had previously explored the option of outsourcing the function as part of a joint venture with Worthing and other local authorities. This was not successful and there was no readily available alternative option that would guarantee a comprehensive, one-stop (not fragmented) service at competitive price.
- 3.7 The option of a shared service based on the Greater Brighton area was considered, but this would have required a great deal of co-ordination and leadership which was not achievable within the timescales and, in any event, this option is not incompatible with the Orbis initiative, as the GBEB option could be pursued from within Orbis Public Law.

4. The Orbis Public Law Option

- 4.1. Brighton & Hove City Council (BHCC), East Sussex County Council (ESCC), Surrey County Council (SCC) and West Sussex County Council (WSCC) have been working together to develop a single legal service to provide legal services to each of the four constituent authorities and the wider public sector.
- 4.2. The close partnership between ESCC and SCC over the last three years, initially through South East Business Services and then Orbis, has led to a strengthening

of the working relationship between the two Council's legal teams. Building on complementary similarities, the teams now regularly share knowledge and expertise. This informal arrangement has developed into the concept of a single Legal Service operating under the umbrella of the Orbis partnership.

- 4.3. Over recent months, the concept of Orbis Public Law has evolved with two new partner authorities. Relationships between BHCC, ESCC and West Sussex legal teams have always been good and the Orbis Public Law initiative builds on this by taking it to a higher level and bringing in additional authorities. The combined service with the four authorities creates a strong geographical block within which Orbis Public Law can operate and reach out to other clients.
- 4.4. The combined gross revenue budget for the four authorities is £10.6 m with an additional spend of £2m on advocacy and specialist advice. Around £1.5m of external income is generated each year. The combined workforce will be an estimated 232 staff including 130 solicitors.

5. The advantages of Orbis Public Law

- 5.1. All four authorities face similar issues: increasing financial challenges and fewer resources mean it is harder to recruit and retain lawyers and specialist staff. Individually, authorities have limited resilience and resort to buying in expensive specialist advice and support. Historically, legal teams have always carried out some external work, such as s106 agreements and work for other public bodies. This brings in extra revenue and helps to keep the cost of the service down for Councils. However, opportunities are hard to maximise when resources are stretched. Joining Orbis Public Law (OPL) provides the following opportunities:

Savings: Joining OPL will enable the service to benefit from savings generated from rationalising structures and avoiding duplication where possible

Greater resilience: At the moment, the service is working at full capacity and unable to cope with surges in volume of work. OPL will give us greater capacity and resilience.

Economies of scale: The greater numbers involved will provide economies of scale and savings as we would be able to make savings on supplies and services and better able to ensure continuity of service.

Career opportunities: (and possible greater security) for staff. Being part of a bigger practice opens up career opportunities for staff as there will be opportunities for specialism, working for different organisations and senior roles.

Recruitment and retention: at the moment, the uncertainty and limited career opportunities makes local authority legal practice less attractive at the same time as private practice is starting to recruit in higher numbers. This has made it difficult to recruit suitably qualified staff, especially in the areas of procurement, property and commercial law. Being part of a bigger practice with career prospects, opportunities for specialism and greater security will make it easier to recruit and retain staff.

Trading and income generation: Joining OPL will generate greater opportunities to trade using OPL brand, capacity, expertise and geographical coverage. This will be enhanced if Orbis Public Law becomes a trading company. Working together and increasing the overall size of the single service brings many advantages.

Developing areas of excellence and expertise: with the numbers involved there is greater opportunity to develop expertise and centres of excellence which will enable the provision of more specialist services, greater income generation and career opportunities.

5.2. Potential Challenges

- 5.2.1. There will be some loss of direct control and potential accessibility of the service depending on the arrangements for locating services and receiving instructions. These will be addressed as part of the due diligence process about levels of service and practical arrangements afterwards.
- 5.2.2 The different authorities have differing levels of expected savings from Legal Services for the 2016/17 year and following years. The targets are presented on differing basis which makes direct comparison difficult. The arrangements will need to include mechanisms to enable the Council to deliver its savings. The proposal in the business case supplemented by the inter-authority agreement will address these issues.
- 5.2.3 Any changes of this scale require careful handling and effective engagement with staff. A staff engagement group with representatives from all the teams in Legal Services meets regularly and there is a staff briefing session taking place fortnightly which continues to be used for sharing information, answering questions and receiving comments/suggestions.

5.3 Vision and Aims of OPL

- 5.3.1. The Vision for Orbis Public law is for “a single, resilient, sustainable, cost effective legal service with a public service ethos with an ability and ambition to grow.”
- 5.3.2 The aims of Orbis Public Law are to:
 - deliver a 10% saving over three years for each of the four constituent authorities;
 - create a resilient, flexible single Legal Service with a critical mass of expertise; and
 - provide a quality, cost effective service for our customers.
- 5.3.3. The 10% indicative savings target is calculated on a different basis from the one used by the Council for financial and service planning purposes and is not significantly different from the 30% target for Legal Services used by B&HCC with the likely figures being £213K and £269K respectively.

6. Business Case proposal

- 6.1 Against the above background, BHCC, ESCC, SCC and WSCC propose to create a shared service partnership to deliver legal services to all four authorities and sell legal services to other public sector bodies. The proposal is made following an options appraisal and a jointly prepared business case (attached as appendix 1).
- 6.2 The preferred option is to create Orbis Public Law as a single service partnership under the management of a Joint Committee. This is a relatively straightforward and familiar model to adopt. Members would still have control over arrangements and staff would remain employed by their existing Council. A Joint Committee would mirror arrangements for the wider Orbis though some changes would be necessary to accommodate four partners rather than the three in the main Orbis (West Sussex are part of Orbis Public Law but not the wider Orbis.)
- 6.3 ***Need for establishing a company:*** A key part of the proposal is the ability to trade and generate external income. Since the introduction of the Legal Services Act 2007, it has been possible for law firms to be owned by non-lawyers and non-legal businesses; these are known as 'Alternative Business Structures' or 'ABS'. An ABS is a limited company subject to normal company regulations with an additional requirement that they are licensed and regulated by the Solicitors' Regulation Authority to conduct legal business. It is proposed to set up an ABS to work alongside Orbis Public Law through which legal services could be provided for public bodies beyond the core service provided to the Councils. Expected changes to the Solicitors' Regulatory Authority Rules mean that such services could only be provided through an ABS, not by the authorities themselves. Without such a vehicle the ability to generate external income will be severely restricted. It is intended to use the regulated company only for work that the authorities are not permitted to undertake themselves. There are likely to be set up and running costs associated with the company
- 6.4 It is a fundamental premise that the high standard of service currently provided to our own Councils will be maintained. We will be well placed to work with other public and third sector partners to give them greater resilience, provide them with additional expertise and reduce their cost of legal services while generating income for the shared service and reducing the net cost to the constituent Councils. The business case attached to this report provides further details.
- 6.5 By working together, the four Councils will be able to realise savings in excess of those achievable in isolation, whilst still delivering a good service to our authorities. The single Legal Service aims to achieve a saving of 10% of net operating costs of each of the constituent Councils by 2019/20. The budget figures for the different authorities are not necessarily calculated on the same basis and the "operating costs" approach is not the same as the one used for projected savings in the B&HCC budget planning. The detailed figures will be examined as part of the due diligence exercise and the financial arrangements agreed before entering into the partnership.
- 6.6 Savings will be delivered through economies of scale, sharing of resources (such as a Law library), reducing external spend on advocacy and specialist advice as well as streamlining management arrangements. Set up costs will be met from existing budgets.

- 6.7 The partners have agreed key principles in relation to financial arrangements. Broadly, decisions required in relation to investment, cost apportionment and savings, will be based on the principles established by the wider Orbis partnership and will be set out in the Inter Authority Agreement which will underpin the arrangement between the Councils.

7. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 7.1 As set out in paragraphs 3.5 to 3.7, the option of staying as a stand-alone service, outsourcing or other shared service options were considered but the OPL presents the best opportunity in terms of resilience, delivering savings and staff career opportunities.

- 7.1 The stand alone service option presents challenge in terms of resilience and sustainability if it is to deliver the projected savings.

- 7.1 The outsourcing option was considered both as part of a joint initiative with other authorities to create a local authority controlled company and also in terms of transferring to an existing provider. None of these presented a viable option realisable within reasonable timescales without fragmenting the service.

- 7.2 Shared services with other district councils or a Greater Brighton based option was considered. The Greater Brighton option could still be pursued from within Orbis Public Law. The other options would not generate sufficient economies of scale to make them viable.

8 COMMUNITY ENGAGEMENT & CONSULTATION

- 8.1 Staff and the unions have been briefed on the proposals. The staff Engagement Group, which has representatives from across all the teams in Legal Services, continues to meet in addition to staff briefing sessions. All comments or suggestions received have been taken into account.

9. CONCLUSION

- 9.1 Although not without challenges and much of the detail still has to be worked out, Orbis Public Law provides the best option and is therefore recommended. The setting up of the company is intended to enable the authorities to do work for other public bodies and generate income to supplement their resources or to deliver savings. This is something the Council would have to do even if we were not joining OPL. It is clear that there are advantages in the OPL initiative providing there is clarity on some of the issues listed above or can be progressed following approval by P&R. OPL has the potential to minimise the adverse impact of a significant reduction in funding. It is therefore recommended that P&R supports the proposals.

10. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 10.1 In general terms there are likely to be financial benefits for each authority involved in a shared legal service, due mainly to economies of scale, reduced external legal costs, joint procurements and increased income generation. As part of the due diligence process, work will now be undertaken with colleagues in the other partner authorities to fully understand and address financial issues, in particular, to ensure a consistent approach to budget and savings information. Determining the budgets to be pooled and held outside of the partnership by sovereign authorities, if any, will be important as well as understanding mechanisms for managing shared costs or appointments and/or distributing income generated by the partnership.

Finance Officer Consulted: Peter Francis

Date: 05/01/16

Legal Implications:

- 10.2 The proposals in the report are within the legal powers of the Council and the setting up of the company will help the Council comply with Law Society Requirements enabling legal services (whether within Orbis or not) to continue to provide legal advice and representation to other public bodies.
- 10.3 The details of the financial and practical arrangements will be addressed as part of the due diligence exercise before entering into an inter-authority agreement.

Lawyer Consulted: Abraham Ghebre-Ghiorghis

Date: 04/01/2016

Equalities Implications:

- 10.4 There are no equalities implications arising from the report, but staff will continue to be employed by Brighton & Hove CC and the Council's policies, including those that relate to equalities will continue to apply.

Sustainability Implications:

- 10.5 There are no sustainability implications arising from the report

Any Other Significant Implications:

- 10.6 None

SUPPORTING DOCUMENTATION

Appendices:

1. Orbis business case
2. Orbis Public Law Joint Committee terms of reference

Documents in Members' Rooms

None

Background Documents

None