



**Sevenoaks District Council/ Tonbridge & Malling Borough Council**

**Business plan for the formation of a joint legal service**

## **Executive summary**

1. It is proposed to form a joint Legal Service comprised of 9 lawyers and 2 supporting administrative staff.
2. The proposal carries little or no risk in respect of costs. Joint working between the 2 teams can be completed within existing budgets. It is anticipated that the merger will create savings, through a variety of ways e.g. less reliance upon external advice, reduction in duplicated work, joint procurement of legal research tools.
3. It is anticipated that the creation of a joint team will meet or exceed the quality of service currently provided across the 2 authorities by the individual teams. There will be a greater resilience, and customers will have access to wider skills/ experience base than previously.
4. For staff involved in the joint service, it is expected that there will be greater opportunities for career development.
5. It is proposed that the existing teams will remain in place at their respective authorities so as to minimise disruption to clients. Fee earners will however be expected to deliver services to clients at both authorities, which will enhance the overall legal service.
6. It is proposed that an administrative model is used for creating the joint team under the Local Government Act 1972, with cross delegation of legal functions.

## The current position

1. A structure chart for the legal service in each authority is attached at Annex 1.
2. As the teams serve District/ Borough Councils, the type of service provided is similar. Further, in common with most District/ Borough Council teams, the lawyers within the teams cover a wide range of disciplines, with individual officers usually focussing on a small number of key areas e.g. planning, contract/ procurement, litigation.
3. It will be immediately noted that the 2 teams are remarkably similar in their composition. Each team has 2 legal officers dealing principally with contentious matters e.g. planning/ litigation, and 2 dealing with non-contentious e.g. contracts/ property. In addition, the Legal Services Partnership Manager assists with the delivery of legal work on contentious matters, and both teams have a part time administration officer/ technical clerk.
4. The delivery of legal services through such small teams gives rise to a number of issues. These include -
  - *Resilience* – temporary gaps in capacity frequently arise for small in-house legal teams. These can arise by posts becoming vacant, ill-health, annual leave or by an individual officer becoming tied up with a major piece of work. The creation of a single team would create a larger skill base from which to draw, thereby reducing these problems.
  - *Experience* – as lawyers at District/ Borough Council level are required to be a 'jack of all trades', this often leads to a reliance on external legal support (e.g. Counsel/ private firms of Solicitors) where a query is specialised in nature. This does of course result in a cost to the authority, which in some cases can be substantial. Clearly, it would be uneconomic for each authority to retain specialist lawyers for each area of work, but at the same time it is difficult for generalist staff to cover increasingly complex areas of law affecting local government.
  - *Resources* – other than human resources, the principal cost to a legal team lies in the purchase of library and resource materials. Such tools can be costly – for example, maintaining the library stock for the financial year 09/10 cost approx £43000 across the 2 authorities. Due to the small number of legal publishers, there is a large amount of duplication across the 2 teams. It is therefore anticipated that savings could be delivered through the purchase of library/ resource materials for a joint team. Indeed, savings have already been identified for the purchase of electronic time recording for 2 authorities.

## **Opportunities for creating an improved service**

5. It is considered that legal services could be delivered more effectively by forming a joint legal team to support both authorities. The aims of this service would be to:-
  - Maintain/ improve level of service to customers
  - Share resources to the benefit of both authorities (e.g. Solicitors/ Legal Executives, research tools, training)
  - Improved efficiency e.g. management systems
  - Reduction in expenditure on external legal advice and support
  - Improved recruitment/ retention of staff
  - As the service develops, the possibility for delivering advice to external organisations

## **Management of the service**

6. The 2 teams are currently subject to a joint management arrangement, under which Adrian Stanfield, Legal Services Partnership Manager, divides his time equally between the 2 authorities. This arrangement commenced on 1 March 2010, with the agreement of Cabinet/ Council at the authorities, and will run for an initial 3 year period.

## **Processes**

7. The Legal Services team at Sevenoaks has held Lexcel accreditation (which is a quality mark of the Law Society for management of the legal practice) since July 2009. As part of this accreditation, the Sevenoaks team has procured an electronic time recording system, which enables the team to record in real time the work undertaken for clients across the authority.
8. It is proposed to introduce IKEN time recording in Tonbridge & Malling, and mirror the office procedures adopted by Sevenoaks. For example, the Office Procedures Manual at Sevenoaks will be implemented, in so far as practicable, at Tonbridge and Malling, where there are currently no documented procedures in place.

## **Monitoring Officer Arrangements**

9. The post of Monitoring Officer at Sevenoaks is held by Christine Nuttall, Head of Legal and Democratic Services. At Tonbridge & Malling, this post is held by Julie Beilby, Central Services Director. In both cases, this statutory role sits outside the day to day operation of the legal team.
10. It is not proposed at this time to bring the monitoring officer function within the joint working arrangements, although Adrian Stanfield, Legal Services Partnership Manager, holds the post of Deputy Monitoring

Officer at both authorities. Additionally, both Solicitors at Tonbridge and Malling also undertake duties as Deputy Monitoring Officers.

### IT systems

11. The IT systems at the 2 authorities are not currently compatible, and officers carrying out joint working would need access to both systems. There are practical issues arising from this e.g. remote access, and it will be necessary to seek input from IT Services at both authorities in order to ensure that legal officers are able to work as efficiently as possible.

### Finance

12. At both authorities, the cost of the legal service is recharged to other services within the Council. At Sevenoaks, the re-charge is calculated using the data from the IKEN time recording system so as to ensure that customers are re-charged according to the work they generate for the Legal team.
13. At Tonbridge & Malling, the cost of the legal service is re-charged across the authority.

### Organisation/ format of the joint team

14. A proposed structure chart is attached at Annex 2.
15. In order to address the difficulties relating to specialisation of staff highlighted at paragraph 4 above, it is proposed that officers within the team should cover a narrower remit than presently. The precise details of this will need to be discussed with staff, but it is envisaged that the areas of work would broadly be divided as follows:-

Area of work	Responsibility
Planning advice/ appeals/ enforcement	Principal Solicitor (SDC)
Licensing advice/ appeals	Solicitor (TMBC)
Complex litigation (inc all High Court litigation)	
Complex prosecutions	
Environmental Health	
Complex s106 agreements	
Contracts/ procurement/ property	Team Leader & Principal Legal Executive (SDC)

	Senior Legal Executive (SDC) Solicitor (p/t) (TMBC) Principal Legal Officer (TMBC)
S106 agreements	Senior Legal Executive (SDC) Principal Legal Officer (TMBC)
Civil Litigation (e.g. debt recovery)  Prosecutions/ planning enforcement  Local tax  Information rights  Housing advice  Legal newsletter/ updates to clients	Senior Legal Executive (SDC)  Senior Legal Officer (TMBC)
Opening/ closing files  Administration of time recording system  Lexcel compliance (in conjunction with Legal Services Partnership Manager)  Upkeep of library materials  General administration – e.g. payment of invoices/ post	Administration Officer (TMBC)*  Technical Clerk (SDC)  *The Administration officer at TMBC also undertakes additional duties outside of the legal function e.g. FOI/ EIR, EU Services Directive. It is not proposed to change this position

### Legal model

16. Broadly speaking, there are 3 types of legal model which can be used for shared services
- (1) A contractual arrangement e.g. under Local Authorities (Goods and Services) Act 1970
  - (2) An administrative model e.g. delegation of functions to another local authority under s101 of the Local Government Act 1972. This can include the secondment of staff under s112 & s113 of the 1972 Act

(3) The creation of a new corporate body e.g. a company or Limited Liability Partnership

17. The creation of a new corporate body would present a number of challenges. For example, the creation of a Limited Liability Partnership (LLP) would require appropriate financial, administrative and independent accountancy support in order to meet the Law Society's Solicitors' Rules and Code of Conduct; Professional Indemnity Cover would be required, which is likely to be expensive; Contracts for the work could not simply be awarded to the LLP – advertising may be required.
18. Whilst the challenges of creating an LLP are not insurmountable, it is considered that there is no great desire at this point to create a vehicle of this nature.
19. There are various types of informal arrangements used for other legal shared service arrangements. For example, in Essex, the legal services teams have created a 'virtual' team with each council continuing to maintain its own legal teams whilst looking to reduce external expenditure through an internal market place. Similar arrangements are in place in Suffolk and Cambridgeshire.
20. The administrative model is considered to be the most practical way of developing shared service arrangements between Sevenoaks and Tonbridge and Malling. It is a model most Members will be familiar with, and will allow for reporting lines to be maintained. It is therefore proposed to create an informal collaboration between the 2 teams, wherein each authority would continue to employ its own teams of lawyers, but each team would undertake work on behalf of the other authority.
21. Whilst it is not currently proposed to transfer or second staff to a lead authority, or to create a new corporate body for the legal service, this position can be kept under review as the partnership working progresses, to ensure that we are using the most efficient model for delivery of the legal service. It is proposed that a formal review of the model takes place after 1 year. This will also allow a period of time for time recording to become established at Tonbridge and Malling, so that accurate data can be used to assess the level of work undertaken for each authority.

### **Insurance**

22. Professional Indemnity Insurance is required for the work undertaken by staff within Legal Services at the respective authorities. Enquiries will need to be made with the respective Insurance companies to ensure that staff are covered to undertake work for both authorities.

### **Future opportunities/ risks**

23. The intention is that the shared team would look to grow the business, through the provision of legal services to other local authorities.
24. Whilst the precise details are presently unknown, it is likely that the Coalition's proposed cuts in public expenditure will impact upon the delivery of the legal service in some way, whether directly or indirectly. The shared service arrangement should enable both authorities to achieve savings/ efficiencies, which should assist in meeting the financial challenges ahead.
25. In 2011, the Legal Services Act will offer new options for the delivery of legal services. Whilst the precise details are still subject to consultation, the Act will allow the creation of Alternative Business Structures ('ABS'), under which the regulation of all lawyers will become entity or firm based (as opposed to the current system, where regulation and discipline is directed at the individual professional lawyer). For in-house teams, this will mean that they can provide services for someone other than their employer if they are licensed to do so.
26. The creation of a separate legal entity as an ABS may well offer an option for the future.

## **Location**

27. 3 options have been identified:-
  - Co-location at either Sevenoaks or Tonbridge & Malling offices
  - Co-location at third party offices
  - Retain a presence at each authority

**Option 1** – this option would necessarily require that the services to one of the authorities would be delivered remotely.

The remote delivery of legal services has been tested between these 2 authorities. Between April 2009 and March 2010 the Legal Services team at Sevenoaks provided legal support to Tonbridge and Malling BC, primarily in relation to planning law (which is the largest area of legal work for the team), although as the arrangement progressed other areas were also supported. This arrangement worked well, with legal officers from Sevenoaks meeting with the planning officers on a fortnightly basis for a liaison meeting. In between times, queries were sent either by email or telephone to legal officers at Sevenoaks. It should be noted that whilst such work was being undertaken, customers at Tonbridge & Malling still had access to the in house legal team.

However, despite the success of the working arrangement outlined above, it is not considered that this option would be desirable for the long term success of the joint legal service. Whilst many queries do



now arrive via email, the ability of customers to obtain direct face to face access to a legal officer with knowledge of local government law is a key asset of the in-house team. To remove that ability from one of the 2 authorities would effectively create a 2 tier level of service, which would not provide an effective customer service to half of our customers. It would also not be conducive to effective partnership working, as it may lead to one of the authorities feeling a loss of ownership in their legal service.

**Option 2** – for a number of reasons, this option is not considered to be desirable.

There would inevitably be a cost to both authorities in obtaining premises for use by the joint team.

Also, for the reasons set out in connection with Option 1, the remote delivery of legal services would not meet one of the key aims of the service i.e. it would not put our customers first.

### **Option 3 -**

This option is preferred for the following reasons –

- It would put the customers first
- Retaining existing staff at each authority will provide continuity with clients
- It will avoid major disruption to staff

The Legal Services Partnership Manager will be responsible for monitoring workloads and moving work between the 2 offices where this is required. At the same time, it is recognised that a key benefit of the joint team will be the ability of customers to approach legal officers at either authority, so flexibility on the part of officers within the legal teams will be required. This will inevitably involve attendance at both authorities for meetings, committees etc.

## **Governance**

28. It is proposed that the Legal Services Partnership Manager will continue to report to the Head of Legal & Democratic Services at Sevenoaks and to the Central Services Director at Tonbridge & Malling, together with the Portfolio Holders with responsibility for the Legal Service.
29. It is further proposed that an annual business/ section performance plan be prepared for the service, which would have regard, in particular, to the following
  - Customer satisfaction/ service levels
  - Cost of the service to the authorities

- Efficiency savings

30. As Officers of the partnership will continue to be employed by their respective authorities, they will therefore still be subject to their existing terms and conditions of employment, and to the direction/ oversight of their existing Directors/ Chief Executives and elected Members.

### **Conflict of interest**

31. It is not expected that conflicts of interest between the 2 authorities will arise very often. However, it is important that procedures are in place to deal with such eventualities.

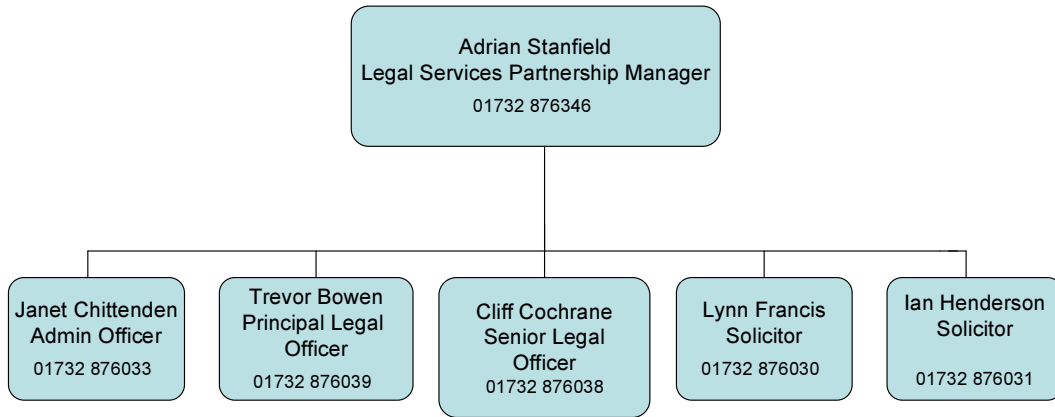
32. In the event that the two authorities had a conflict of interest, it is proposed that third party lawyers could be instructed to deal with the particular matter in question.

### **Period of agreement/ termination provisions**

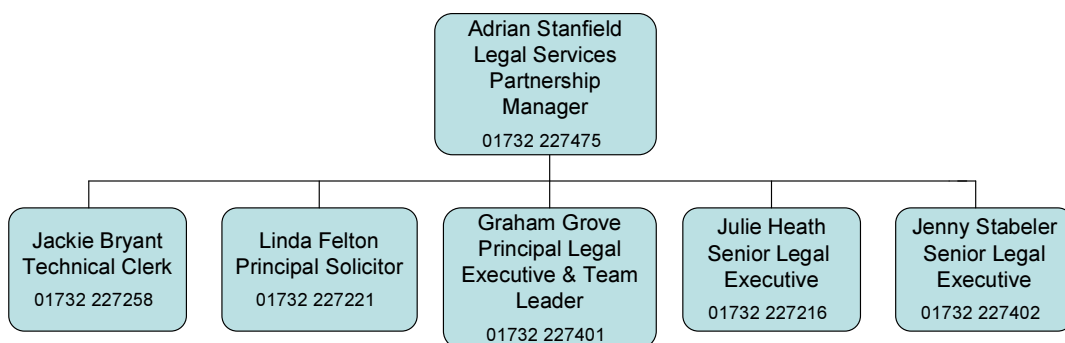
33. It is proposed that the shared service would run for an initial 5 year period, with a review after 1 year.

Adrian Stanfield  
Legal Services Partnership Manager

## Legal Structure Chart - TMBC



## Legal Structure Chart - SDC



# Legal Services – Proposed Structure

