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| SUBJECT: | FUTURE LEGAL DEPARTMENT |
| MEETING: | CABINET |
| DATE OF REPORT: | 9th JANUARY 2019 |
| DIVISION/WARDS AFFECTED: | ALL |

1. PURPOSE

- 1.1 Monmouthshire County Council has evolved considerably over the last decade and will continue to do so. The world is changing too. The combined effect is a growth in external pressures such as Child Protection cases (up >75% in 2018 alone) and an uncertain legal landscape owing to Brexit, and internal pressure resulting from an ambitious Corporate Plan and underlying strategies that require innovation and flexibility. Despite this change, the Legal department has not evolved at the same pace, and in some areas has retreated in terms of resourcing. The team itself is good; it comprises skilled, deeply experienced individuals with a genuine commitment to their work and the County. The fact that the level of service is where it is, is due to their willingness to go above and beyond. However, there is barely the structure or capacity to cope with current demand, and the situation is such that the department is unlikely to be able to deal with what current demand should look like, and needs change to support where the Council is so clearly heading. More broadly, external legal advice across the Council is uncoordinated, unexploited and not subject to any sort of quality assurance – as much is spent on external legal advice as is on the legal department in total.
- 1.2 This report aims to set out what the future legal department should look like and how this will be achieved. This first step is aimed at stabilising current legal provision while seeking efficiencies through new systems and structures of work that will enable ‘true’ demand to be met, costs to be exposed and further cost rises across other departments prevented. Thereafter the aim will be to reduce costs through better coordination of pan-MCC legal advice and the upskilling of the legal department to take on more of this work in the future. Once this foundation is achieved, the opportunities of income generation can be assessed, turning elements of the legal department into fee-earners, not cost burdens, without impact on the core and statutory work already being undertaken.

2. RECOMMENDATIONS

- 2.1 Cabinet is requested to approve:
- a. the introduction of a new electronic way of working through the procurement of new case management and electronic ‘bundling’ software, and access to a pre-existing legal portal already used by 8 LAs in Wales;
 - b. the outcome of a job evaluation of all solicitor posts in the legal department;
 - c. the confirmation as permanent of the current, short term Business Manager position;
 - d. the recruitment of 2 commercially focused lawyers (contract, commercial property, planning, procurement, commercial general etc);
 - e. the recruitment of a family lawyer;
- 2.2 An initial, in-year capital cost of £23,000 is predicted for the electronic work. The anticipated first year (FY19/20) pressure incurred by this proposal above current budget is £196,028. However, anticipated savings in future years mitigate this initial cost.

3. KEY ISSUES

- 3.1 The recommendations follow an intensive review of the current legal department set against MCC demand. This was carried out following the initial steps of an estimate process that seeks first to understand the situation, second identify what the strategic intent is, where the department sits within that intent and what challenges to success need to be overcome, and third, identify a course of action.
- 3.2 In first seeking to understand, a comprehensive investigation has taken place. Starting with the department itself and one to one interviews with every member of staff, broadening to SLT and Heads of Service to identify what demand exists and what demand should look like, then to the political ambition and direction of the different groups across Council and the Corporate Plan and underlying strategies, liaison with neighboring local authorities and understanding their practice and the idea of collaboration, study of the overarching legal construct applicable to Councils in Wales, and thereafter into the wider legal network across Wales and beyond. This work continues.
- 3.3 This work exposed the fact that the lawyers were not paid market competitive salaries leading to a risk of losing skills and experience that could not be replaced. There had been a considerable rise in demand owing to external factors such as the UK-wide rise in child protection work, as well as internal factors such as the Asset Management Strategy (AMS) that placed the department over-capacity with an impact on quality and timeliness of work, human impact and cost. As demand has risen, resource has shifted to the most stressed area, but has not grown to meet the demand. The systems and structures of work are outdated and inefficient leading to unnecessary time and financial costs. External legal costs are rising year on year and now at least match the total spend on the legal department itself, albeit with no coordination or assurance of this spend. A lack of appropriate engagement meant that legal considerations and costs were not factored into strategies
- 3.4 This manifested as the loss of one lawyer earlier in the year and pressure from neighbouring Local Authorities looking to recruit by offering superior pay awards; market supplement payments therefore become necessary to retain staff. Of the 2 most recent legal posts advertised, one received a single applicant, the other received none and went unfilled. A single element of the AMS, the purchase of Castlegate, produced 153 hours of legal work that both required dedication by the single supporting lawyer beyond their core hours, and affected their ability to continue to develop external revenue streams; in market terms, this was £42,080.50 of legal service provided internally. The ongoing impact of this same project will be to generate an estimated workload in 19/20 similar in time and expense; while the property management of this purchase has been contracted externally, no such provision has been made for the legal workload generated.
- 3.5 The old-fashioned, paper-based method of working incurs considerable financial and time costs, as well as creating risk for those members of the department required to work with and transport enormous casefiles. Over 100,000 pages were produced last year at a cost in excess of £20,000, and the impact of copying and physically distributing huge casefiles for Court and other parties is incalculable, as well as a GDPR risk. External legal spending needs better understanding in the first instance as departments typically establish relationships with law firms and, understandably, rely on them to provide accurate and timely legal advice that the legal department cannot hope to achieve currently. These costs can be repeated without any system to exploit the advice and upskill existing lawyers, or take advantage of the myriad training opportunities offered by law firms, and the spend on external legal advice is likely to exceed £500,000 in the near future, if not already¹.
- 3.6 So what should the legal department be doing? At its core it needs to enable MCC to meet all statutory demands made of it and the other departments through timely, informed advice that always seeks to add value, as well as the fundamental, transactional work that requires legal coordination. It needs to go further than this; it needs to enable MCC and the ambitious and innovative approach it has – its strategic intent as articulated by the Corporate Plan and the

¹ It is difficult to be exact as to legal spend despite the work done across all departments with the finance team, but from 2012-17 the data available averaged just under £350,000 a year with some clear omissions, and the children services spend on Counsel for 17/18 alone was £309,418.93. Note, this is revenue costs and does not uncover 'hidden' capital expenditure on legal advice.

enabling strategies. For the former, this requires the department to keep pace with the ever-increasing workload across all areas of the department, and the latter requires greater capacity and broader skills in the commercial arena. This is what the changes proposed are aimed at.

- 3.7 The course of action chosen is one designed to establish a department suitably staffed and skilled to meet a greater proportion of the demand that MCC has, while growing resilience through appropriate salaries to allow both retention and recruitment, as well as a system of work that enables corporate knowledge to grow and be shared across the department. This means dealing primarily with capacity, which requires an up to date case management tool, an electronic bundling application that removes so much of the physical work of paginating and copying casefiles, and a secure, online share point that removes the need for physical copies of documents. Allied to this is the need to increase staff numbers to deal with a workload that currently exceeds capacity and skill, driving natural, internal customers to external legal provision at a cost.
- 3.8 The temporary introduction of a business manager role is assisting in the change management process and improving some areas of work to avoid missing Court deadlines, provide a single point of contact for the Courts and other parties, and developing electronic working to prevent lawyers from getting dragged into administrative work that distracts from their true roles in adding value through considered and expert legal advice. This role is currently focused on the children services work carried out within the department, but will naturally develop its terms of reference as a better understanding of the challenge emerges and skills are appropriately tasked within the department. Later, it might look to broaden to the whole department and implement effective training plans to ensure currency in the law, and start to tackle the issue of information management that is crucial to not only building corporate knowledge but also developing resilience in the department.
- 3.9 A new lawyer focused on children services will allow the Deputy Head of Law (DHoL) to step back from their own caseload and take a better, coordinating role across not just children service work but the wider gambit of family law, incorporating adult services work that is infrequent, but often an afterthought currently. This will allow these lawyers to take part in a broader sweep of legal work, improving their skills and developing corporate knowledge and resilience as well. This position will also allow prudent succession planning for the DHoL who is on a retirement pathway.
- 3.10 Two new commercially focused lawyers will allow the excess demand across MCC owing to the ambitions of the AMS and other plans to be met. It will also lead to earlier involvement of someone from the legal department in such planning, with the intention of reducing the need for external legal advice, or at least a better coordination of such advice and the ability to learn from it, preventing repetition. These roles will seek to utilise skills developed in either the public or private sector across a range of areas of law such as commercial property, energy industry, planning, contract, regeneration work, procurement or more general, in-house practice. As skills develop in this section, focus may then turn to additional income generation opportunities. This also accounts for prudent succession planning, recognising that a current PT role will initially reduce to 2 days a week then be taken as an eventual saving upon retirement.
- 3.11 If we are to retain our people, and attract the right kind of people to this department, the roles must be job evaluated with a view to increasing the offered salaries. The most recent recruitment attempts speak to this, as well as the incredibly competitive market for some lawyers at the moment leading to a round robin of appointments among local authorities and the establishment of a 'sellers' market'. Further, the new commercially focused section will need an appropriately resourced section head that will result from a change to job description.
- 3.12 Success will be a department structured and resourced to provide a high quality service across MCC in ensuring statutory functions are met, the ambitions in the Corporate Plan are enabled, and a foundation is laid for future expansion into further cost saving and eventually income generation. It will also mean MCC is aware of the in-house legal capability and make better use of it.

4. EQUALITY AND FUTURE GENERATIONS EVALUATION

- 4.1 Through this plan, MCC can employ and develop high-skilled lawyers in support not only of MCC's duties and ambitions, but also of what the County itself is trying to achieve. It provides an opportunity in Monmouthshire to enter into a highly skilled career, and develop it in non-traditional ways that provide a force multiplier for the individual and the County. It is blind to circumstance and discerns based only qualifications and attitude. Beyond the immediate impact of job creation, this work should contribute to departments across MCC to enable them to deliver a better service.

5. OPTIONS APPRAISAL

- 5.1 Do nothing. The department is not capable of meeting MCC's demands. This is evidenced by the risk of wasted costs orders in Court and the need to send work externally at vastly inflated costs compared to the possible in-house solution. To do nothing would cost MCC considerably more than the proposed pressure financially, as well as increasing risk unacceptably.
- 5.2 Be meek. Why bother? To tinker will neither solve the problems nor establish a foundation from which considerable gains could be made in the future. Trying to add a part time lawyer here, or take a greater saving elsewhere by seeking to remove someone at retirement age for example would not create the space and time needed to develop our people and build resilience.
- 5.3 Be bolder. This is a first step, not a final proposal. Other options have been considered when it comes to finding an appropriate course of action and there is sufficient demand among SLT and Heads of Service to take this proposal further; for example, the addition of an employment lawyer could be added to the proposal, and even a trainee solicitor too (w/e Sep 19). However, this proposed course of action is not just about growing a department's numbers – it has to be tailored to a realistic period of growth that relies not just on sticking people into new roles and 'pressing play'. They will need mentoring and investment to fully realise the potential of this plan and so to spread the ambition too thin would dilute the possible returns on this investment. We can go bolder in 20/21.

6. EVALUATION CRITERIA

- 6.1 In recent months child protection work has had to be sent externally at considerable cost (just 2 cases would pay for the salary of a lawyer for 6 months). Initially, success will be no more cases being sent externally. The administrative burden of the current way of working has led to wasted costs orders in Court; success would be a cessation of any further such orders. The paucity of applicants and competition from other LAs has made getting and keeping staff hard; success will be a team happy in their roles and resourced suitably to prevent them from leaving, while attracting high quality talent into MCC.
- 6.2 The lack of consideration of legal factors in the AMS resulted from a lack of previous engagement. Success will be the Head of Law, or Head of Commercial Law section, being up to date on all MCC ambitions and able to allocate resource to each element, adding value at every step and ultimately reducing costs. An established network across the legal sector that leads to more targeted advice being sought at reduced cost, and increased learning for MCC, will be a success. Ultimately, a foundation of corporate knowledge across the department that builds resilience such that the loss of one lawyer to illness or circumstance does not affect output for short periods through a skills or capacity gap.
- 6.3 Finally, success will be a service that all departments are aware of and confident in coming to in order to prevent issues from arising, rather than to seek to solve issues already created, and this will come from considered advice that is timely and adds value.

7. RESOURCE IMPLICATIONS

- 7.1 See Appendix one. The savings calculated to offset the cost implications are basic, and do not attempt yet to articulate the potential cost savings in other departments that change could bring, let alone future revenue opportunities.

8. CONSULTEES:

- 8.1 A draft case was taken to SLT on 9 Nov and SLT/Cabinet 12 Nov, following on from one to one discussion with the Chief Executive and Cabinet Member for Governance. Consultation has also taken place, relative to the discrete areas of responsibility, with members of the legal department, and a copy provided to the UNISON representative. A further check of figures conducted with the finance department, as well as the inclusion of costs later identified after these consultations, has resulted in the pressure figure cited at para 2.2.
- 8.2 Further consultation will occur with the circulation of this paper prior to Cabinet

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Appendix One

| Pressure | IY | 19/20 | 20/21 | 21/22 | Notes |
|------------------------------|------------------------|---------------|---------------|---------------|---|
| E-working | 23,900 Capital Cost | 5020 | 5020 | 5020 | IY Capital Cost to implement then annual license, maint and support cost thereafter for Case Management and E-bundling software and portal web access |
| New Post - Business Manager | | 26317 | 27269 | 27269 | Band F SCP 25-29 starting at 28. |
| New Post - Family Lawyer | | 37849 | 39201 | 40180 | Band J following JE SCP 35-39 |
| New Post - Commercial Lawyer | | 37849 | 39201 | 40180 | Band J following JE SCP 35-39 |
| New Post - Commercial Lawyer | | 37849 | 39201 | 40180 | Band J following JE SCP 35-39 |
| JE – 4 Solicitors | | 5799 | 9697 | 13411 | |
| JE - Head of Commercial | | 8715 | 8745 | 9712 | |
| Oncosts for pay adjustments | | 50945 | 53894 | 56407 | 33% used as standard for NI and Superannuation |
| Total | | 210343 | 222228 | 232359 | |
| | | | | | |
| | | | | | |
| Savings | IY | 19/20 | 20/21 | 21/22 | Notes |
| E-working | | 2055 | 2055 | 2055 | Reduction from current Lexis contract at 7075 to new supplier at est 5020 |
| Photocopying | | 8000 | 8000 | 8000 | Reduction from current real spend of 20000 to 12000. |
| DHoL Position | | 0 | 33000 | 33000 | |
| PT Legal Asst | | 3203 | 3287 | 16900 | |

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|-----------------------------|--|-----------------|-----------------|---------------|--|
| Oncosts for pay adjustments | | 1056.99 | 11974.71 | 16467 | 33% used as standard for NI and Superannuation |
| Total | | 14314.99 | 58316.71 | 76422 | |
| | | | | | |
| Net pressure | | 196028 | 163911 | 155937 | |