

WIRRAL COUNCIL

CORPORATE GOVERNANCE CABINET

26 OCTOBER 2011

SUBJECT:	REVIEW OF LEGAL AND COMMITTEE SERVICES
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF LAW, HR AND ASSET MANAGEMENT
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR ADRIAN JONES CORPORATE RESOURCES
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

1.1 The purpose of this report is to commence the process of reviewing the capability and capacity of the Council's Legal and Committee Services teams. This review picks up one of the specific lines of enquiry identified by Anna Klonowski in her Corporate Governance Report ("the Corporate Governance Report") and is part of Work Stream 4: "Undertake a Series of 'System Stress Tests' Across the Council". This first report looks at the current position and the challenges which the teams face. Following the Committee's consideration of these issues, a further report will be presented setting out options to address these challenges.

2.0 RECOMMENDATION

2.1 The Committee is requested to consider the contents of this report and to determine an appropriate way forward.

3.0 REASON FOR RECOMMENDATION

3.1 The Committee will be asked to consider a number of 'System Stress Tests' and need to respond in an holistic manner, having regard to the Council's challenging financial circumstances.

4.0 BACKGROUND AND KEY ISSUES

4.1 The Legal Services team and the Committee Services team are both part of the Legal and Member Services division of the Law, HR and Asset Management Directorate. The Legal and Member Services division comprises the following teams: Legal Services; Committee Services; Member Services; Civic Services; Elections and Electoral Services; Registration Services (Births, Deaths and Marriages); the Coroner Service; and Central Administrative Services.

Legal Services

- 4.2 Legal Services comprises 14.2 FTE solicitors including the Head of Service. The present structure of the services is typical of such arrangements in many local authorities. There are four divisions: Children's and Adults' (broadly supporting CYPD and DASS); Planning and Environment; Employment, Contracts and Debt Recovery; and Property. Historically each of these divisions was headed by a Group Solicitor, or similar level post. Currently there are two Group Solicitors in post (Adults and Children; and Employment, etc). It is proposed to combine the Property team with the Planning and Environment team, under one Group Solicitor and to recruit to that post. This is within the approved budget for the service.
- 4.3 Like most local authorities, Wirral obtains legal services through a combination of in-house provision and external advice from both solicitors and barristers. The in-house team is small for a large metropolitan authority. Unusually for such an authority, the level of in-house provision was below the de minimis threshold for Compulsory Competitive Tendering in the 1990s. Currently the level of in-house provision is more akin to that typically found within a small to medium sized unitary authority, rather than at a large metropolitan borough; particularly one with such a large number of child protection cases.
- 4.4 Since the era of Compulsory Competitive Tendering a significant number of new and evolving areas of law have become increasingly relevant to the work of a local authority. These include the following:
- Freedom of Information (and the parallel regime of the Environmental Information Regulations).
 - Data Protection.
 - Executive Arrangements under the Local Government Act 2000 and subsequent legislation. This requires Officers to support both an Administration (Cabinet) and the Scrutiny Function. Wirral has more Scrutiny Committees (Five plus a Scrutiny Board) than most other councils.
 - The Standards Regime regulating Member conduct.
 - The European Procurement regime.
 - Equalities and Human Rights.
 - Whistleblowing and complaints.
 - Increasing obligations in respect of consultation around service changes.
- 4.5 In addition to the above, other legislative changes that have affected specific service areas and added to the demand for support from Legal Services. One example is the changes to the liquor licensing regime. In addition to legislative changes, a combination of evolving caselaw and the reports of Judicial Inquiries (following high profile cases) have also contributed to increased demand for Legal Services. One such inquiry following the particularly tragic case of Peter Connelly, resulted in such significant increases in child protection work that this was recognised by additional resources being allocated to Legal Services. However, other changes have resulted in increased service pressures without compensating additional resources.

- 4.6 As the additional demands on Legal Services have accumulated over the years, so the existing lawyers have responded and taken on new areas of responsibility. This has placed increased demands upon the individuals in question (and often resulted in a long hours culture); and has meant that new and complex areas of legislation are being dealt with by lawyers who specialise in other areas of law. The result, not surprisingly, is that the most common complaint about the legal service is that of delay. This is caused by sheer volume of work. The more significant risk to the authority is that advice is being given by lawyers who are not specialist in the new emerging complex areas of law such as Freedom of Information, Data Protection and Procurement.
- 4.7 To create a fit for purpose Legal Service will require investment in additional lawyers with relevant specialist knowledge of the emerging areas of local authority law.
- 4.8 The second area of risk flowing from a Legal Services team that is stretched, is that the service becomes almost exclusively reactive rather than proactive. Sheer volume of work means that senior lawyers have very limited time to familiarise themselves with emerging legislation and caselaw, or to be proactive and raise awareness of such changes across the authority through a structured training programme. Investment in additional specialist legal capacity would mitigate this area of weakness too.
- 4.9 To address the issues identified above it is recommended that the proposed bringing together of the Planning and Environment and Property functions proceeds. However, it is also recommended that a new Corporate Governance team is created within Legal Services. This team would focus on the following areas of work:
- Procurement and Commissioning (including contract disputes and, where appropriate, termination)
 - Freedom of Information; Environmental Information Regulations; and Data Protection
 - Equalities and Human Rights
 - Whistleblowing and Complaints
 - Standards and Ethical Governance
 - Supporting the democratic process (providing legal advice on Committee / Cabinet reports)
- 4.10 The creation of a new Corporate Governance team would enable existing lawyers to concentrate on their core work. This would allow work to be turned around faster. It would enable the senior lawyers to have the time to manage their teams more effectively. In addition it would free up the capacity for a more proactive service delivery model. Lawyers would be able to invest time in training colleagues in other departments on key legal issues (both current and emerging). This will also help mitigate a risk identified in the Corporate Risk Register: namely that "If we do not learn about changes to the legislative and policy environment it could impede our ability to understand and respond to them. Overall, a more proactive legal services team would be better able to support the delivery of the Corporate Plan and the Council's policy priorities.

Committee Services

4.11 Currently there are four members of staff employed within Committee Services (2 F/T on PO4 and 2 P/T 21.5 hrs a week on Band G). A third F/T PO4 post and a F/T Band G post are currently vacant and being recruited to within the approved budget for the service. The Democratic Services Manager also undertakes some committee work.

4.12 The current work of the Committee team includes the following:

- Preparation of all Agenda and Minutes for the Council and its Committees.
- Informing of actions to be taken by officers following meetings.
- Preparation of the Calendar of Meetings
- Preparation of the Forward Plan of Key Decisions - monthly.
- Administering the Council's Petition Scheme (hard copy and e-petitions).
- Providing some overview and scrutiny support, mainly to the Scrutiny Programme Board.
- Standards work, including administering Member complaints and registering gifts and hospitality.
- Administration and Clerking of School Admission and Exclusion Appeals, (including some schools outside LEA control from which income is generated).
- Administration of Employee Appeals.
- Administration of Licensing Appeals.
- Amendments to the Constitution.
- Publication of Cabinet Member Decisions.
- Administering the Modern.gov (committee information) system and as Super users liaising with the provider.
- Outside Body Appointments.
- Assisting with Election work.

4.13 The Committee Services team is under increased pressure at present because of the following factors:

- Since 2008 Committee Services has been reduced by five F/T posts: 2 PO4, 1 Band H and 2 Band G posts.
- Increase in the number of scrutiny call-ins which mean convening Special meetings of Overview and Scrutiny Committees.
- At least 1 agenda and 1 Supplement are prepared by Committee Services for every Council meeting.
- The Cabinet meets every 3 weeks and Committee Services prepares at least 2 agendas each time (1 for the briefing and 1 for the meeting itself).
- An increase in the number of Ombudsman enquiries in respect of School Appeals which are very time consuming.
- The number of committee reports submitted late, (after the agenda for the meeting has been published) have increased so consequently there has been an increase in the number of supplementary agendas produced.
- Progress chasing on actions to be taken by officers agreed at meetings. Administering and Updating the Executive Team's Forward Plan of Cabinet Reports.

4.14 Whilst recruitment to the two vacant posts will help alleviate some pressures, it will not adequately address all issues or allow for emerging future demands on the services. Additional demands will be placed on Committee Services as a result of the following:

- Administration of the All Party Working Group to be established to propose the most appropriate form of the Council including the possible return to the committee system, once the Localism Bill is enacted.
- New Cabinet Committees –
 - Safeguarding Reference Group (meets 4 times a year)
 - Corporate Governance Committee (expected to meet every 3 weeks).
- The Members' Remuneration Panel is due to meet in 2012 to review the Scheme of Members' Allowances. The possible return to the committee system has implications in respect of this.

4.15 One area emerging from the Corporate Governance Report is the need to improve the quality of reports; and the related need to ensure that decisions are implemented (as opposed to being merely allocated to a senior officer and then forgotten). This includes a number of elements. It starts with the need to ensure the accuracy, completeness and timeliness of reports. This includes checking that reports have been cleared by Legal Services (to ensure legality, including Constitutional compliance) and the Finance Department (and any other service affected by the report). It is then necessary to ensure the robustness of the decision making process. This includes ensuring that any motions (including formal Notices of Motion) and amendments put forward by Councillors are constitutionally compliant. The decision (i.e. the Cabinet/Committee Minutes or Record of Decision) must then be published promptly. The decision must also be communicated to appropriate officers to ensure that those responsible for implementation are clear as to their responsibilities. Then comes the need for tracking the implementation of the decision; and, where necessary, escalating to senior managers (including, ultimately, the Chief Executive) any Member decision that has not been actioned appropriately.

4.16 There are some opportunities for addressing the pressures faced by Committee Services. These include

- The Modern.gov system could be more fully exploited by -
 - Introducing a new report template to allow information to be pulled through into Minutes, so saving some time.
 - Preparation of all committee reports within the Modern.gov system, using the internet, rather than importing word documents as we do now. Reports prepared in this way can automatically be circulated for comments and clearance. This will also mean that they can not be submitted late, as they will automatically go forward to the next scheduled meeting. This proposal has cost implications as Modern.gov will need to be commissioned to provide support and training before this initiative can be rolled out to PAs and Report Authors across the Council.

- Follow up actions to be taken following meetings using the Modern.gov system. This facility needs to be made more customer friendly. It would assist if an officer (Champion) is nominated from within each Department or Service to be responsible for progress chasing and ensuring actions are taken.
- The School Appeal Administration System is out dated and no longer fit for purpose. It is not compatible with the system used in the Schools Section which means officers from both sections have to input the same data into two different systems. There is a cost associated with addressing this.
- Make more use of the web library and so reduce the size of agendas.
- Move to electronic Agendas and Reports which would require investment in IT but deliver savings (and Carbon Budget benefits) in the longer term.

4.17 Overall, staffing reductions since 2008 mean that Committee Services is fully stretched meeting existing service needs. If additional tasks are allocated to the service, such as chasing up actions, this will require resourcing if it is to be done successfully and sustained.

4.18 The Corporate Governance Report recommends that a number of service areas are subjected to 'System Stress Tests'. The Committee will need to consider all these tests and have regard to the Council's very challenging financial position before deterring the appropriate (and affordable) response to the issues identified.

5.0 RELEVANT RISKS

5.1 These are identified in the body of the report.

6.0 OTHER OPTIONS CONSIDERED

6.1 This report addresses issues relating to Legal and Committee Services. It does not detail options to address these issues.

7.0 CONSULTATION

7.1 This report has been written in consultation with senior managers in Legal and Member Services.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

8.1 None directly arising from this report.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

9.1 None directly arising from this report.

10.0 LEGAL IMPLICATIONS

10.1 These are addressed in the report.

11.0 EQUALITIES IMPLICATIONS

11.1 None directly arising from this report.

- 11.2 Equality Impact Assessment (EIA)
- (a) Is an EIA required? No
 - (b) If 'yes', has one been completed? N/A

12.0 CARBON REDUCTION IMPLICATIONS

12.1 None directly arising from this report.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 None directly arising from this report.

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APPENDICES

(List and, if not attached, specify location – e.g. website and/or Group rooms.)

REFERENCE MATERIAL

(Include background information referred to or relied upon when drafting this report, together with details of where the information can be found. There is no need to refer to publicly available material: e.g. Acts of Parliament or Government guidance.)

SUBJECT HISTORY (last 3 years)

Council Meeting	Date