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| To: | Finance Panel |
| Date: | **10 September 2018** |
| Report of: | Head of Law and Governance |
| Title of Report: | Oxford Legal Services – Report on external income generation |

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| Summary and recommendations | | |
| Purpose of report: | | To report on the strategy for external income generation for the Council’s Legal Services |
| Executive Board Member: | | Councillor Nigel Chapman, Customer Focused Services |
| Recommendation(s): The Finance Panel is recommended to : | | |
| **1.** | Discuss and note the report. | |

# Introduction and background

At its meeting in January 2018, the Scrutiny Finance Panel requested the Head of Law and Governance to provide some further detail on the income generation activities of the Council’s Legal Services department. This report seeks to provide such detail and to give some insight into the opportunities and challenges presented.

Since 2011, Oxford City Council’s legal department has been set an annual external income target. From an initial target figure of £25k in 2011, this rose year on year, and by 2016 included an additional income assumption figure of £70k to meet the additional costs incurred by the department’s restructure in that year. This led to an effective external income target figure of £110,000 for the year 2016/17. Despite efforts to achieve this level of income, this did not prove possible and as a result the income target was reduced to a more realistic target of £40,000 for the year 2018/19. The department has approached the challenge of generating a realistic level of external income from existing resources with some energy, but has always had to bear in mind the need to ensure that the Council’s own legal requirements, which are by no means insubstantial, can continue to be properly met as its primary purpose.

The initial proposal for the generation of external income was through the Oxfordshire Legal Hub. This was created in 2010 by the Oxfordshire local authorities acting jointly, to provide a mechanism allowing one authority, with no capacity to undertake a particular legal matter, to pass that matter to another participating authority for completion. The Hub was created in response to a number of factors - a desire to demonstrate a degree of “shared service” across the Oxfordshire legal departments, the need to ensure resilience in particular specialisms within those departments, and a desire to facilitate some potential external income generation. The Hub, which since its creation has been administered exclusively by this Authority, was generally welcomed, and in its early years saw some useful and promising activity, as the various Oxfordshire councils experimented with using the facility, generally with satisfactory results. The fixed hourly rate for work undertaken was significantly lower than that charged by external firms of solicitors, so the authorities were saving money as they sought to level out the inevitable “peaks and troughs” of local authority work.

The early promise of the Hub, however, has never really been fulfilled. Despite some sporadic bursts of interest and activity in the Hub, the various participating Authorities have tended to use it only in cases of emergency – either where they are conflicted on a particular matter or where they have unexpectedly (and temporarily) lost staff resources. For this Authority this trend has proved somewhat disappointing, as in consequence the external income generated by providing services to other Hub authorities has been consistently lower than budget expectation.

From around 2012 Oxford Legal Services sought additional potential customers from other public sector bodies, principally Housing Associations. Again, after a fairly promising start this work also disappeared, when restrictions were placed on the provision of legal advice to bodies holding charitable status (most Registered Providers of housing are registered charities). In addition, as local Housing Associations were increasingly taken over by nationals, the trend has been for large associations to source their legal services on a national basis, often from “magic circle” firms of solicitors, rather than from smaller local operators, using their buying power to drive greater economies of scale and to have their legal services supplied from a single source.

In addition, the regulatory framework through which local authority legal departments are permitted to charge “external” customers for services supplied is highly restrictive. While it has long been accepted that services may only be supplied to other public sector bodies, the Solicitors Regulation Authority (“the SRA”) have over recent years imposed further restrictions on the work that lawyers employed by local authorities may supply to third parties. As an example, there is a prohibition on selling services to “the public or a section of the public”, which means that all “external” legal service activities must be conducted through a mutual collaboration with a defined group. In addition, the SRA have made it clear that “marketing” (certainly in an untargeted way) is unacceptable. While it therefore remains possible to sell certain services to external public sector clients, this must be carried out in a carefully controlled way to ensure compliance with the legislation and guidance.

Due to the restrictions imposed by the SRA, a number of local authorities wishing to sell legal services to third parties have taken the route of establishing an Alternative Business Structure (“ABS”), which takes the form of a company created solely for the purpose which would then be subject to the SRA’s full regulation and compliance regime. Leading examples of authorities which have created an ABS are Kent County Council, Essex County Council and a combination of Cambridgeshire authorities. The costs and effort of creating an ABS are considerable, and it is worthy of note that perhaps the leading practitioner, Kent, has recently recorded a significant shortfall in its expected income and seen its chief executive resign from post.

A table showing the Legal Services target income (“Assumption”) figures, and the actual income generated for the years 2013 to date is attached as Annex 1. The table shows the income assumptions and actuals for both the income recovered from third parties through work carried out for the Council (eg through recovery of conveyancing costs and Magistrates’ court costs) and the true external income generated by taking on third party work. For the purposes of this report, the external income assumptions and actuals are of principal interest. In this regard, it can be seen that the external income generated by this department in the years 2013 to 2016 was limited. While the Council provided some good, timely and well-received legal assistance to its various external clients, the overall quantum of income generated through the Hub and Housing Associations over those years was generally disappointing. The shortfall in this income has, however, largely been offset by an over-recovery of income generated through work carried out for the Council itself (although the income assumption regarding the recovery of costs of drafting s106 Agreements has been seriously prejudiced by the introduction of CIL ) as well as careful management of external legal spend.. The overall “bottom line” budget figure for the department has, therefore, for most years been in line with the budget.

# Income Generation Strategy

For the reasons set out above, by 2016 it was realised that simply relying on existing resources like the Hub would never produce a significant income stream. The strategy for income generation was therefore re-evaluated. While the creation of an ABS was considered, this was discounted as being too expensive and inappropriate for the levels of income the Council could reasonably seek to achieve. Instead the 2016 report suggested the following:

“*We can clearly no longer rely solely on the type of “one-off emergency” instruction which typifies the external work carried out under the Legal Hub and the Public Sector Body arrangements currently in place. To succeed in achieving the sort of dependable income streams now required, we must seek to establish longer-term, “guaranteed” work flows from our external public sector clients. This type of “continuing instruction” (e.g. all of a third party’s housing injunctions, or contract advice or property transactions to be handled by Oxford Legal Services) could either be charged for on an individual basis or on a one-off up-front payment basis for a year at a time. The important point being that the client would not be required to decide, on each occasion, whether or not to instruct Oxford Legal Services on individual matters, there would be an automatic assumption that all work falling within the specified category would come to us. This not only provides a much more sustainable income stream for Oxford Legal Services but also relieves the client of the administrative burden of considering how every individual matter should be dealt with*.”

To this end, the managers of the department met representatives of a number of other local authority legal departments (principally authorities located geographically reasonably near-by), to assess their interest in relying on this department to meet their needs in regard to some form of continuing flows of work. As will be appreciated, this type of approach involves considerable management time and effort.

In 2017 this approach began to pay some dividends with the creation of a link with the Milton Keynes Council, under which the Council was sent a stream of (largely fairly low level) property matters, creating a steady stream of income. While the value of each instruction was relatively low, the cumulative effect was a more significant external income stream than had ever previously been achieved. In addition, some interest in the proposal was shown by Reading Borough Council, who although they have been slow to start sending any volume of instructions, may yet be interested in establishing some form of continuing association. The external income generated in 2017/18, therefore constituted the highest achievement by the department, and it was hoped that this was an indication of the way ahead. In terms of “genuine” third party trading, the year 2017/18 generated £24.3k, while additional calls were made on the department by the Council’s new companies, which resulted in further income generation of £7.1k , Total external income for the year 2017/18 was therefore some £31.4k.

In the year 2018/19 to date, however, the volume of work received from Milton Keynes has reduced, and the overall income levels have declined. The current amount of income received or still to be invoiced in 2018/19 is some £14k. It is likely that if this work stream is to be revived significant further effort will be required to “reinvigorate” the Council’s contacts with Milton Keynes senior management. At this point it has proved impossible to set up client meetings despite repeated efforts by the department’s Practice Manager. Further liaison with Reading may also pay dividends, but the department will also need to continue to seek new external work (potentially with authorities located further afield). This is time-consuming work, and is set against a background of a highly competitive legal market, aggressive marketing from the ABSs, and the general reluctance of all local authorities to incur any external costs in a time of austerity.

# Income target for the current year

As a result of the matters set out above, the department’s external income target for 2018/19 of £40k is unlikely to be achieved. It is probable that the year-end income figure will be £20k. Whether a figure of £40k will be appropriate for future years will largely depend on the success of efforts to secure sustainable income streams. Where sustainable arrangements can be secured, the figure is attainable, if challenging. Customers are, however, hard to find, and in addition to all the efforts expended in sourcing and serving external clients, this department must always remember its primary obligations are to the Council and its companies. This external income figure will need to be re-visited by the Head of Law and Governance in the current budget process for 2019/20.

# Financial implications

1. The financial implications are largely set out in the report.

# Legal issues

1. As set out in the report, it is necessary to ensure that at all times the department is acting lawfully and within the constraints imposed by the SRA.

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| **Report author** | Lindsay Cane |
| Job title | Manager, Legal Services |
| Service area or department | Law and Governance |
| Telephone | 01865 252570 |
| e-mail | [lcane@oxford.gov.uk](mailto:lcane@oxford.gov.uk) |