

From: Mr Gary Cooke, Cabinet Member for Corporate and Democratic Services
Benjamin Watts, General Counsel - Interim

To: Policy and Resources Cabinet Committee
2 December 2016

Subject: Governance and Law – Commissioning Arrangements – Progress Report

Classification: Unrestricted

Summary: This report provides the Policy & Resources Cabinet Committee with an update on recent developments and future plans regarding the establishment of the commissioning and governance arrangements.

Recommendation: The Policy & Resources Cabinet Committee is asked to consider the contents of this report and note the progress regarding the establishment of the commissioning and governance arrangements.

Introduction

1. On 21st March 2016, the Cabinet took a decision to proceed with the formation of an Alternative Business Structure (ABS) for the delivery of better and lower cost legal services to the council and a more profitable business for KCC to own.
2. On 27th April 2016, Geoff Wild in his then role as Director of Governance and Law attended the Trading Activities Sub-Committee to explain to Members the proposed governance arrangements that flowed from the Cabinet decision.
3. There have been a number of reports over the past year to the Policy and Resources Cabinet Committee which have jointly covered the commissioning and provider arrangements. Given the development of Invicta Law, it is now the right time to separate out the reporting around the two elements of the project.
4. This report provides an update for Members regarding the creation of the client-side function for the Council that has been established over recent months.

Corporate Law and Assurance Team

5. In taking the decision to proceed with the creation of the ABS, Cabinet also agreed a new management structure for the Governance and Law function. This provided for a separation between the management team of what will become the company (Invicta Law) and the team that would advise the Council on corporate and strategic legal issues whilst also commissioning and managing the contract with the company.

6. The Cabinet decision provided for a managed transition to the new arrangements to ensure that potential conflicts of interest were avoided and managed whilst ensuring that both the commissioner and provider elements of the project continued to progress. The structure chart for the internal arrangements is included for ease of Member's reference at Appendix 1.
7. The structure and staffing of the Corporate Law and Assurance (CLA) team has been confirmed by the Personnel Committee. As a result, Ben Watts was appointed as General Counsel (Interim) effective from 1 July 2016 to provide leadership in relation to corporate legal issues. Any permanent recruitment to the post will be a member appointment and this will be considered further by the Personnel Committee.
8. The General Counsel (Interim) has taken over a number of the roles previously carried out by Geoff Wild to allow him to focus on his new role as Chief Executive of the new company. These include the statutory Monitoring Officer role, membership of Corporate Board/CMT, responsibility for Democratic Services and the Information Resilience and Transparency Team, the function of SIRO (Senior Information Risk Owner) and legal advisor to the full Council, committee meetings and Members. On 15 October 2016, he was also appointed as the County Returning Officer.
9. The General Counsel and the CLA team are also supporting Members and the Democratic Services team in legal issues arising from the council's business.
10. The creation of the role of General Counsel (Interim) reflects a change to the way that legal issues and legal risk will be identified and managed within the Council. In addition to managing the contract with Invicta Law, the main aim of the team is to proactively assist the Council to identify legal risks at an early stage, preventing the need for significant and costly legal advice at a later date. Importantly, the function will work across the council to help officers work more effectively with lawyers through improving the instruction process and way in which legal advice is procured and used.
11. The transition of these roles has carefully considered organisational needs and the development of the respective council and company teams. Members have previously asked for assurances around the new management arrangements. Geoff Wild and Ben Watts have worked through a transition plan regarding the handover of the Monitoring Officer, County Returning Officer and Senior Information Risk Owner roles.
12. These changes have meant that since 1 July 2016, Invicta Law have been able to move towards acting as a provider to the council and the Corporate Law and Assurance team as commissioner. Both the Council and Invicta Law have recognised the opportunity to jointly design future

service delivery and to help Invicta Law build a suite of products that will meet the needs of their target client base across the country.

13. The CLA team has been incrementally built over recent months and became fully operational on 5th September 2016 and was drawn entirely from existing Kent Legal Services staff. The transferring team comprises four lawyers and two support staff who will be further assisted by two apprentices who are currently being recruited. To ensure retention and avoid uncertainty, these permanent staff were flexibly deployed into their new roles.
14. In creating the CLA Team, the project team which presented to Cabinet recognised that training and development for the team was as important as the development and training of the staff who would be transferring to the company. The General Counsel and CLA roles are unique within local government and the Council is supporting these staff through professional development to define and deliver these exciting and challenging new roles successfully.
15. The CLA team's primary functions are to:
 - a. Provide advice on legal issues and legal risk to the Council's Members and senior officers
 - b. Work with officers across the council to transform the way that lawyers are instructed and involved by KCC.
 - c. Manage the arrangements and contract between the company and the Council acting as commissioner of all legal services and advice
 - d. Retain and manage the Council's significant contracts and deeds
16. The appointment of the General Counsel (Interim) and the creation of the Corporate Law and Assurance Team carefully reflected the views expressed by Members of this Committee (and Cabinet, Governance and Audit Committee and the Commissioning Advisory Board) in relation to staff retention, transition and knowledge transfer.

Interface with Invicta Law

17. Whilst the ABS is being developed, the CLA team has a crucial role in working with both the Council and the ABS to ensure that the future provision by the ABS back to KCC is both **better and lower cost**. The development phase of the ABS provides an excellent opportunity for the CLA and Invicta Law teams to work together to redesign and improve the service delivery. This has included joint workshops on process and workflow and survey activity to understand client and staff perspectives.
18. The CLA team will work closely with the company and seek to foster a positive working relationship. There are times when the CLA team will be a client of the company, but its main role will be to hold the company to account and ensure it is meeting its contractual requirements.
19. This changing relationship brings a scrutiny on the outcomes and service provided by Invicta Law which will be new for many of its lawyers.

Pleasingly, it is something that the management team of Invicta Law have positively welcomed.

20. The transitional period has provided an opportunity to work together to provide a clearer way of working for when Invicta Law start trading fully. The General Counsel (Interim) and Principal Solicitor are working with the Directors of Invicta Law on the detailed transition plan to manage this.
21. The General Counsel (Interim) attended the Challenger Group in the summer to provide an outline of the expectations that senior officers and staff can have in relation to the new legal service. Sharing the same platform, James Pigott from the company side talked about the opportunities and transformation that were being planned for the new business. Importantly, both of them explained the change that would be required from the business and the Council in terms of ways of working. Further joint sessions are planned for Challenger Group and officers throughout the council to ensure service continuity for front-line services across KCC.
22. The CLA team and Invicta Law have agreed single points of contact to ensure continuity of discussion around key areas of activity and negotiation over the coming months. This reflects one of the council's key contract management principles around managing relationships with suppliers.

Activity Since July 2016

23. As well as providing legal advice on a wide range of corporate and strategic matters, the team has been working on a range of issues related to the creation of Invicta Law and the establishment of the commissioning arrangements.
24. In an effort to support Invicta Law in their transition, the CLA team has been reviewing historic Kent Legal Services files and disposing of them in accordance with the council's retention policies. This has freed up considerable resources within Invicta Law to concentrate on fee earning and the development of the ABS.
25. The CLA team has undertaken surveys of Invicta Law staff, and of officers across the Council who instruct them. The survey outcomes are being used by the CLA team to start a dialogue about the necessary changes in behaviour both from legal services and those instructing them. The CLA team will be working with officers across the Council to ensure that the instruction of legal services is streamlined and cost effective.
26. The surveys were produced to provide a benchmark in respect of the current legal services provision. This will enable the CLA team to measure the positive progress made by the company as they implement improved systems and ways of working. Consistent with the Invicta Law

business plan, it is expected that the level of satisfaction will increase over the course of the company's trading, including the first year.

27. The survey results have provided the CLA team with an insight into how officers view the legal service they receive. It has also been helpful to understand how KCC officers are perceived by legal services. This has provided valuable information that will assist the company to work towards a better and cheaper provision in the future and understanding their clients better. The CLA team will be delivering a range of learning and training for KCC staff that will directly address a number of the issues and concerns raised by Invicta Law lawyers in the surveys.
28. The surveys have been followed up with officers across the council to gain a greater understanding of the legal needs of KCC both now and in the future. Throughout that work it has become apparent that there is a need for continued conversation with this cohort of officers and as a result the General Counsel (Interim) is creating a Cross-Directorate Legal Client Forum which will meet for the first time in December.
29. The Client Forum will provide the commissioning team with a focus group to work through proposed changes and to help with the transition of Invicta Law. Most importantly, it gives the people who use Invicta Law an opportunity to gather and share their thoughts on the service and an opportunity to inform improved future delivery built around their requirements.
30. The General Counsel (Interim) met with members of the Invicta Law project team to inform their specification for a case management solution from a client perspective.
31. Over recent months, members of the CLA team have been auditing the work and charging of Invicta Law. Opportunities for change and improvement are being identified and worked through with the company. It is also expected that the council's investment in the company will allow for some of these improvements to be delivered through the use of technology in due course.
32. In addition to looking at the charging and work of Invicta Law, the CLA team have also looked at the way in which KCC officers use and instruct lawyers. This is being reflected in the training that is being developed for delivery in the first three months of 2017.
33. Over the past few months, the team has been building relationships with officers across the council and gaining an understanding of the key legal issues facing KCC operationally.
34. The management of the council's significant contracts and deeds is an important element of the CLA team's responsibilities. The team has carried out a review of the existing legal case files and the historic deeds, contracts and documents held by the council. The team is now working on a project to turn these documents into a fully searchable database

that will reduce the future cost of managing these documents and the legal cost of reviewing them for transactions.

35. The Council has now formally established the governance arrangements in relation to the exercise of shareholder responsibilities. The first meeting of the Shareholder Board took place on 28 September, and future meetings have been arranged and confirmed.

Forthcoming Activity

36. In the run up to the commencement of trading by Invicta Law, there are a number of strands of different activity that the client side are working on. These include:

- a. Further work analysing legal spend by directorate and identification of planned spending for the remainder of 2016/17 and for 2017/18 to manage and align Invicta Law and Collaborative Planning forecasts. This will improve understanding of the council's planned legal needs and improve the accuracy of forecasting for the Council and the financial management of the business.
- b. Continued development of the governance arrangements consistent with the other trading activities and budget requirements of the Council.
- c. Meetings of the Cross-Directorate Legal Client Forum to inform the service delivery, client expectations, improvement journey and specification of legal needs for future years.
- d. Detailed work on the specification to inform the commissioning arrangements and to allow the Council to provide Invicta Law with likely demand for 2017/18 based around planned activity.
- e. Negotiation of the contract for services and ancillary legal documents between the Council and Invicta Law.
- f. Project planning and delivery around the future management of the Council's significant contracts and deeds working with colleagues in Infrastructure and Invicta Law to design the new way of working.
- g. Communications strategy to KCC and Invicta Law around the role of the Corporate Law and Assurance Team and the Council's new approach to legal commissioning. Work will include refreshing the visibility of the entire division including Democratic Services and the Information Resilience and Transparency Team.
- h. Provide legal advice and support to KCC on the transition of the company to new premises including advice on the property arrangements and TUPE provisions where needed.

- i. The movement of the Corporate Law and Assurance Team to the Democratic Services corridor to provide Members and officers with their corporate democratic and legal functions in a single area.
 - j. Establishment of commissioning meetings with key clients of Invicta Law to monitor spend, activity and performance. Additionally, these meetings will look at how the Corporate Law and Assurance Team can support the improved management and instruction of legal matters and respond to the issues raised in both the client and Invicta Law Staff surveys.
 - k. Detailed working with Invicta Law around the transition plan to ensure that the arrangements are in place to manage service delivery during their move to new offices and commencement of trading.
 - l. Further work with Invicta Law around the implementation of their case management solution to ensure that the Council's needs are met.
37. The General Counsel (Interim) will provide further update reports to the Policy and Resources Cabinet Committee during this period and provide further detail on the commissioning activity ahead of the new financial year.

Recommendation: The Policy & Resources Cabinet Committee is asked to consider the contents of this report and note the progress regarding the establishment of the commissioning and governance arrangements.

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Appendix 1 – Revised Structure

