

EAST SUSSEX FIRE AND RESCUE SERVICE

Meeting	Fire Authority
Date	7 December 2023
Title of Report	Provision of Monitoring Officer, Deputy Monitoring Officer & Legal Services
By	Duncan Savage, Assistant Director Resources/Treasurer
Lead Officer	Duncan Savage, Assistant Director Resources/Treasurer

Background Papers	Fire Authority: 10 December 2015 – Item 894 - Provision of Monitoring Officer, Deputy Monitoring Officer & Legal Services 2016 – 2018 Fire Authority: 6 December 2018 – Item 70 - Provision of Monitoring Officer, Deputy Monitoring Officer & Legal Services
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Appendices	None
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Implications

CORPORATE RISK	✓	LEGAL	✓
ENVIRONMENTAL		POLICY	
FINANCIAL	✓	POLITICAL	✓
HEALTH & SAFETY		OTHER (please specify)	
HUMAN RESOURCES		CORE BRIEF	
EQUALITY IMPACT ASSESSMENT			

PURPOSE OF REPORT	To consider the arrangements for the provision of legal services and Monitoring Officer support from 1 April 2024.
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EXECUTIVE SUMMARY	The current legal services collaboration agreement between East Sussex Fire Authority and Brighton & Hove City Council (B&HCC) expires on 31 March 2024. The Authority has already exercised the two year extension provided for within the existing collaboration agreement which commenced 1 April 2019.
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As the Fire Authority is responsible for the appointment of the Monitoring and Deputy Monitoring Officer this paper outlines the current position and recommends a course of action which suits business need and secures best value.

RECOMMENDATION

The Fire Authority is recommended to:

- i. agree that the Monitoring Officer of Brighton & Hove City Council continues to be the appointed Monitoring Officer for the Authority;
- ii. agree that the provision of Legal Services, Monitoring Officer appointment and deputising arrangements are to be provided by B&HCC for a three-year period with an option to extend for two further years;
- iii. delegates authority to the AD Resources/Treasurer to agree the detail of the new agreement with BHCC; and
- iv. note that, in accordance with the Authority's Procurement Standing Orders (PSOs) 4.1, the Treasurer, after consultation with the Monitoring Officer, Procurement Manager and Chairman, has approved a waiver of PSO 2.7.

1. INTRODUCTION

- 1.1 The existing five-year collaboration agreement between both parties expires on 31 March 2024 after the expiry of the two year extension. Brighton & Hove City Council has provided Monitoring Officer, Deputy Monitoring Officer and Legal Services since the establishment of the Fire Authority in 1997. A separate contract is in place for legal support for the Authority's enforcement role (Business/Fire Safety).

2. LEGAL ASSESSMENT

- 2.1 Counsel's opinion was sought when the previous agreement was approved in 2018 and this confirmed that under Regulation 12(7) of the Public Contracts Regulations 2015, the Hamburg exception, a competitive procurement process for these services is not required.
- 2.2 The appointment of the Monitoring Officer is governed by s5 of the Local Government & Housing Act 1989. The Monitoring Officer role has to be an appointment of an individual person. Whilst general legal services can be undertaken by a company or body, the Monitoring Officer role has to be the appointment of a named person. It does not have to be an employee of the Fire Authority – the Fire Authority can designate any suitably qualified person to be the Monitoring Officer.

3. ASSESSMENT OF CURRENT SERVICE

- 3.1 The management of the current collaboration agreement for the provision of MO, DMO and Legal Services rests with the Assistant Director Resources/Treasurer who meets to review performance on a quarterly basis with the Head of Legal Services at B&HCC. A suite of key performance indicators has been put in place,

including customer feedback and this is reported to SLT as part of the annual review presented by the Head of Legal Services. The Service has accessed a wide range of legal advice under the existing agreement (general, commercial, contract, employment, governance etc) and has found the service to be responsive and able to provide support effectively outside of normal office hours when required. Specialist support has been provided for key projects for example P21 and for a wholesale review of the Authority's Constitution.

3.2 There are alternative models of delivering these services, for example the Authority could appoint a suitably qualified individual as its Monitoring Officer and separately contract with a legal services provider. This model is in operation elsewhere within the fire sector.

4. **FINANCIAL ASSESSMENT**

4.1 The actual expenditure with B&HCC on the provision of MO, DMO and legal services for the previous years is shown below:

Year	2019/20 £'000	2020/21 £'000	2021/22 £'000	2022/23 £'000	2023/24 £'000 (forecast)
Budget	114.9	117.2	118.4	120.8	127.2
B&HCC spend	117.3	98.1	99.5	96.3	117.2
Non B&HCC/ Project spend	31.9	11.0	19.2	1.2	4.1
Total spend	149.2	109.1	118.7	97.5	121.3

4.2 The current spend for 2023/24 is based on Q1 & Q2 actuals only.

4.3 Price increases during the current arrangement have reflected increases in staff costs (primarily pay awards and changes to pension costs) and are fixed at 3.5% pa. In addition to this, there are a number of added value areas which should be taken into account, namely:

- Every effort is made by B&HCC to prioritise our work. Given the emergency 24/7 nature of our work, this is of considerable assistance and would not necessarily be achieved with a more commercial contract;
- B&HCC / Orbis Public Law have specialist lawyers across all fields and, in the event that usual lawyers are not available, resources are allocated from elsewhere so resilience is built in;
- Availability of 24/7 support;
- Is consistent with the ethos and spirit of public sector partnership;
- There is a high level of understanding and experience of the FRS 'modus operandi'; and
- Research indicates that hourly rates remain competitive when compared to the NEPO and CCS framework rates.

5. PROCUREMENT STANDING ORDERS (PSO)

- 5.1 The proposal to proceed is permitted under PSO section 4.1 which states:

In the event that the application of these orders prevents or inhibits the delivery or continuity of service, a waiver may be sought. A waiver is required for any proposed procurement or contractual action which is not compliant with these Orders.

A waiver cannot be given if it would contravene the Public Contracts Regulations 2015 or any other applicable legislation.

You must obtain approval for a waiver in writing specifically identifying the PSO that is being waived and the reason for which the waiver is sought, including justification and risk. When a waiver is sought, advice from Procurement should be sought at the earliest opportunity. A waiver cannot be granted retrospectively; this is viewed as non-compliance with these Orders.

Any proposal to waive any of the provisions of one or more PSOs in relation to a Contract must be referred by the Internal Customer to the Assistant Director Resources/Treasurer. Except in an emergency, the proposal must be in writing, setting out the reason(s) for the waiver.

The Assistant Director Resources/Treasurer may waive any provision of one or more PSOs in relation to a proposed Contract, except where it contravenes any applicable legislation. Except in an emergency, the Assistant Director Resources/Treasurer shall consult the Monitoring Officer, the Procurement Manager and the relevant Member of the Authority before making a decision.

Procurement must maintain a log of all waivers, and store documentation for waivers within the Contracts Register.

- 5.2 B&HCC officers have confirmed that they are content to put in place a new Collaboration Agreement under the current terms.

6. CORPORATE RISK

- 6.1 The Authority and the Service cannot operate without the provision of legal services and a nominated MO. Without a contract to support this provision in place at 1 April 2024, there would be a corporate risk to the Authority.

7. CONCLUSION

- 7.1 Whilst there are alternative options for the provision of MO, DMO and Legal Services, on the basis that the current service model meets the Authority's need and can demonstrate value for money it is recommended that the Fire Authority approve a new collaboration agreement with B&HCC for a period of up to five years.