



## **Business case for the formation of a single Legal Service for Brighton & Hove City Council, East Sussex County Council, Surrey County Council and West Sussex County Council**

### **1. Executive summary**

1.1 Brighton & Hove City Council (BHCC), East Sussex County Council (ESCC), Surrey County Council (SCC), and West Sussex County Council (WSCC) are working together to establish a single Legal Service to provide legal services to the four constituent authorities and the wider public sector. The proposed single Legal Service builds on the good work of the Orbis business partnership between ESCC and SCC, which was formalised in April 2015. Plans have also been shaped by preliminary work between ESCC and SCC Legal Service teams to share knowledge and expertise.

1.2 It is proposed to establish a separate Legal Service under the Orbis umbrella which will be known and branded as 'Orbis Public Law' with a Vision to be:

***A single, resilient, sustainable cost effective legal service with a public service ethos with an ability and ambition to grow***

1.3 The objectives of the proposed single service will be to:

- enhance the quality of service to our current customers;
- increase resilience and flexibility;
- reduce the overall cost of the service through economies of scale;
- create a sustainable model with the ability to grow and develop;
- increase efficiency and reduce duplication;
- establish areas of excellence;
- increase staff development opportunities;
- recruit and retain staff more easily; and
- provide opportunities to generate more external income.

1.4 The single Legal Service will be created by combining the resources of all four Legal Service teams. This would give a set-up operational budget of £10.7m<sup>1</sup> and a total workforce of 232 staff including 130 solicitors. A practice on this scale would become a public service market leader and create a critical mass of expertise. Importantly, the single practice would be underpinned by a public service ethos with the ability to provide efficiencies to the constituent Councils and the wider public sector, thereby playing its part to help protect front line services.

1.5 This report considers the advantages and disadvantages of four different operating models and concludes that a Joint Committee for the single shared legal service is the preferred option. This will ensure all partners have equal control and participation. It also mirrors the wider Orbis proposals which some Members and officers are familiar with.

1.6 Alongside this, we propose developing and processing an application for Orbis Public law Ltd as an Alternative Business Structure (ABS). The ABS would be a separate legal entity regulated by the Solicitors' Regulation Authority (SRA) which would provide a vehicle to trade more widely than existing regulatory powers allow and generate income to enable the single service to reduce reliance on budgets from the constituent Councils, ultimately reducing the cost of legal services they require.

1.7 This paper sets out the business case for a single Legal Service and includes:

- the reasons for proposing a single service;
- background information;
- the benefits for each partner authority;
- options for operating models;
- governance arrangements;
- design principles; and
- programme management.

1.8 This business case needs to be considered and approved by the Cabinets or relevant committees of each of the four constituent Councils. If approval is given to the broad principles, it is recommended that:

- a Joint Committee is set up for Orbis Public Law; and
- a) a business case is developed for Orbis Public Law Ltd as an ABS to work alongside the Joint Committee model.

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<sup>1</sup> Excluding spend on external advocacy and specialist advice

## **2. Why are we doing this?**

2.1 There is a compelling need for Councils to explore more radical options for delivering services. Options may include greater partnership working (with both the private and public sector), shared services and alternative business structures. Each of the four Council's legal teams face similar issues. Increasing financial challenges and fewer resources means that it is harder to provide a quality, and often specialised, legal service that Councils rely upon. Individually, each Council struggles to recruit and retain legal staff. This is a particular issue in key specialist areas, such as commercial areas of property and contracts.

2.2 There has been an increase in demand for legal support to enable our Councils to be more creative in facilitating procurement and contractual arrangements on the terms that are the most advantageous to each Council. This requires specialist knowledge and experience which is not always readily available in house, and has to be procured externally. This has cost implications for each Council and is frequently a budget pressure.

2.3 Legal Services have considerable experience of always generating income, however income strategies have not always been well developed. Income arises from a range of sources including s106 agreements, legal fees, third party charges for agreements, ad hoc advice arrangements to other public sector organisations and more formal arrangements. With greater pressures on budgets authorities legal services are looking at ways of maximising income to ease budget pressures. However, for a sole Council to generate income, on a material scale, without detriment to its in-house provision, would require significant investment in new capacity to be able to sell in the market.

## **3. Background information**

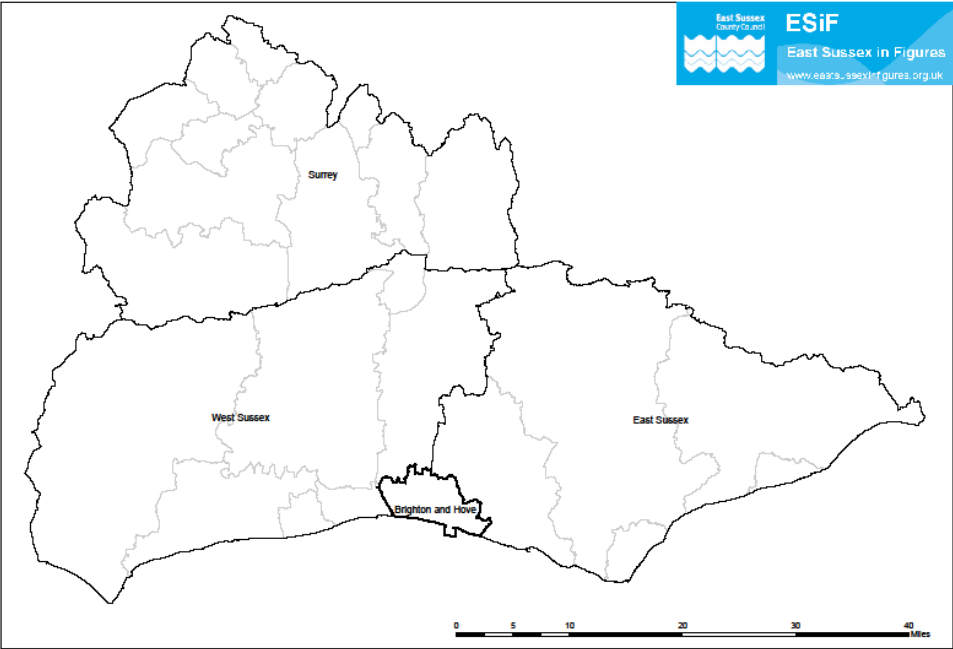
3.1 BHCC, ESCC, SCC and WSCC are all forward thinking and innovative Councils with a clear ambition to improve efficiency and deliver good quality, affordable services for all our residents. Each authority has a strong track record of delivering through partnership with others. The Orbis partnership between ESCC and SCC has already established an effective working relationship across transactional and professional business services. Orbis was formalised April 2015 and incorporates Human Resources and organisational development, Property Services, Technology and Information, Procurement, Finance and business operations. The partnership is governed by a Joint Committee. In December 2015, BHCC decided to become the third Orbis partner for all these services, subject to due diligence.

3.2 The Orbis partnership, and its expansion to include BHCC, provides a strong framework from which Orbis Public Law can benefit. There has always been a good relationship between the four legal teams. Closer working between ESCC and SCC over the last three years has led to a strengthening of the link between the two legal teams. Relationships have always been good with the BHCC legal team and its inclusion in the wider Orbis makes it a natural partner for Orbis Public Law.

3.3 The addition of WSCC, as a fourth partner, is a further reasoned progression. ESCC, SCC and WSCC are three major partners in 'the Three Southern Counties' (3SC) devolution bid which

was submitted to the Local Government Secretary in September 2015. The bid includes a strong commitment to build and develop opportunities for service transformation and this proposal contributes to the delivery of that ambition. This clear commitment to work together supports the inclusion of WSCC into a wider shared legal service model. Bringing WSCC in Orbis Public Law also makes sense geographically providing a significant area within South East England in which Orbis Public Law can serve the public through its Councils and potentially reach out for additional work (Figure 1). The range of public service partners that already work with the four local authorities will provide a core group of potential beneficiaries of a dedicated public sector legal service.

**Figure 1 Extent of Orbis Public Law**



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3.4 Legal Services currently form part of each organisation’s corporate governance structure. They have a key role in terms of service delivery: keeping vulnerable people safe, providing support to ensure the delivery of efficient and effective front line services and ensuring robust and appropriate corporate governance at a time of change and great challenge. The teams also deliver services to other public service organisations, including schools, the police and fire and rescue services.

3.5 Legal services manage a significant operational budget on behalf of each Council with a total operational budget of £10.7m per annum (excluding spend on external advocacy and specialist advice). As with all service areas within the four Councils, each Legal Services team has been challenged to reduce the costs of delivery; savings have already been taken by each Council from their 2015/16 budgets. The net budget to deliver core services has yet to be confirmed through a due diligence process; more work will be required in this area and to identify what the core service will look like.

**Table 1 Legal Services indicative budgets 2016/17**

*For consistency, each authority's spend on advocacy and specialist advice has been excluded. The net revenue budget is net of external income only.*

	<b>Gross Revenue budget £</b>	<b>Net revenue budget £</b>
BHCC	2,480,000	2,127,000
ESCC	1,983,000	1,602,000
SCC	3,558,000	3,231,000
WSCC	2,647,000	2,276,000
<b>Total</b>	<b>10,668,000</b>	<b>9,236,000</b>

Notes:

**BHCC** data is 2015/16 forecast outturn.

**SCC** – excludes Information Governance team

**WSCC** data based on 2016/17 staffing and 2015/16 June forecast report for non-staffing. The budget does not include year end adjustments such as for law library, case management systems etc. Staffing costs may be understated because some support is provided from a central Capital contract and the income figure of £370k may include income which does not relate to Legal Services.

3.6 In addition, the four authorities spend around £2m per annum on external legal advice. Legal Services hold the budget for this specialist support at the of the Councils.

3.7 Each Legal Services team has a broadly comparable structure of different practice areas including social care, litigation, property, employment, highways and planning. The teams are led by a Head of Service, Director or Chief Officer who fulfils the authority's Monitoring Officer role. The range of work carried out by each Legal Service team is similar although BHCC is also responsible for the full range of District and Borough functions. A full list is shown at Appendix 1.

3.8 In April 2016 the combined service will employ an estimated 232 staff at a total budgeted cost for 2016/17 of £9.9m (Table 2).

**Table 2 Estimated staff numbers 1 April 2016 (fte) and 2016/17 full year cost**

	<b>Solicitors fte</b>	<b>Paralegals fte</b>	<b>Support staff fte</b>	<b>Total staff fte</b>	<b>Total estimated staff cost 2016/17 £</b>
BHCC	30.9	8.9	5.0	44.8	2,178,000
ESCC	17.2	16.8	12.0	46.0	1,773,000
SCC	44.8	12.0	15.4	72.2	3,371,000
WSCC	37.6	24.6	8.0	69.2	2,561,000
<b>Total</b>	<b>130.5</b>	<b>62.3</b>	<b>40.4</b>	<b>232.2</b>	<b>9,883,000</b>

Notes:

Excludes Head of Service/Directors/Chief Officer

Paralegals: Legal Officers and Assistants: Support Staff: Practice Manager, admin assts and secretarial support

ESCC - budget includes £170k for agency staff

WSCC – additional support staff are supplied through the Council's Capita contract (these are not included in the Table)

3.9 The four Legal Services teams currently generate around £1.5m in external income by providing services to other public sector organisations. The main areas are:

- Schools and academies<sup>2</sup>
- S106 agreement work
- Other local authorities and public bodies
- Trusts and minor authorities
- Grant lease and license fees
- Recovery of court costs
- Commercial projects

#### **4. Benefits of a Single Service**

4.1 Each of the four Councils recognises that a single service solution would provide an opportunity to address the main challenges they face. Establishing a single service across three County Councils and one unitary authority provides an opportunity to create a legal service collaboration on a significant scale with an ability to influence the public sector legal services market. Importantly the service will have a public sector ethos with the ability to provide efficiencies to the constituent councils and the wider public sector, thereby playing its part to help protect front line services.

4.2 The benefits of the proposed single service will be to:

##### **a) Increase resilience and flexibility**

A larger pool of staff will provide capacity to meet workflow demands across the four authorities. The shared service will benefit from a greater combined knowledge and an increased pool of specialists and will be better placed to respond to peaks and troughs in workload. Resources would be deployed in the optimal way, reducing the need to buy in more expensive external options whilst not compromising the quality and level of service currently enjoyed by the respective authorities.

##### **b) Reduce the overall cost of legal support**

The single service would aim to achieve a 10% reduction in costs over three years from 2016/17. This would be achieved by:

###### **i. generating more external income**

Increased capacity and expertise would provide opportunities to market and sell services to other public bodies. This would generate additional income and reduce the net cost of the single service.

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<sup>2</sup> Not all external

**ii. reducing external spend on advocacy and specialist advice**

The development of practice areas, greater capacity and increased flexibility, will reduce dependency on external providers. A number of the partners have the same court catchment areas; increased cooperation will enable more in house coverage and a consequential reduction in spend on external counsel.

**iii. Streamlining management and right-sizing the team**

The larger single service will provide opportunities to restructure management roles and responsibilities, reduce staff through natural wastage and recruit new legal staff at a level appropriate to the skills required.

**iv. Increasing efficiency and reducing duplication.**

Costs will be further reduced through economies of scale. For example:

- the service will only require one law library and one case management system.
- training costs per head could be reduced through greater volume.
- the service would benefit from increased purchasing power.
- time would be saved by providing single advice on issues common to all the Councils.

**c) Establish areas of excellence**

Consistent demand across the Councils in specialist areas of practice, where demand from individual councils previously has been sporadic, will justify investment in training lawyers in those practice areas. This will:

- i. create centres of excellence;
- ii. broaden capacity;
- iii. reduce the need for external spend;
- iv. enhance the ability to provide a service to other public sector organisations; and
- v. provide opportunities for staff development.

**d) Increase staff development opportunities**

A bigger service will enable staff to gain expertise in a greater range of practice areas and with a larger range of customers. This will enable staff to develop and progress, ensuring better retention of ambitious and able people.

**e) Recruit and retain staff more easily**

A larger and more diverse client base, and the ability to undertake a greater range of work for a leading market player, will be attractive to candidates. The scale of the service mean there will be more opportunities for staff to develop and progress in their careers. Jointly, ESCC and SCC have already recruited four new trainees.

## **f) Create a sustainable model with the ability to grow and develop**

Greater resilience, the creation of centres of excellence, the ability to invest and market presence will enable the provision of a comprehensive service to a range of public service organisations. Over time, the single service has potential to be a public service market leader.

### **5. Vision and ambition**

5.1 Our vision is for:

***A single, resilient, sustainable cost effective legal service with a public service ethos with an ability and ambition to grow***

5.2 Our ambition is to:

- deliver a 10% saving over three years for each of the four constituent authorities;
- create a resilient, flexible single Legal Services with a critical mass of expertise; and
- provide a quality, cost effective service for our customers.

5.3 It is a fundamental premise that we will maintain the high standard of service that is currently provided to our own Councils. A shared service, on the scale proposed, will be well placed to provide a comprehensive, specialist and cost effective service to other public and third sector partners. This will give them greater resilience, provide them with additional expertise and reduce their cost of legal services while generating income for the shared service and reducing the net cost to the constituent Councils.

5.4 Our vision and ambition for the Service is underpinned by eight design principles:

- deliver against savings targets for constituent authorities
- integrate the service – one legal practice, multiple locations
- focus on enabling and adding value to the customer
- share knowledge and reduce duplication
- future proof the Partnership
- maximise organisational self-sufficiency and resilience
- develop and operate with a commercial mind-set
- exploit technology to improve performance and manage caseloads

### **6. The future for Legal Services**

6.1 In order to create the way forward described in this plan, we have considered a range of potential options. These are described below.



#### **a) Maintain current arrangement**

This would mean retaining the current approach to the delivery of legal services in each of the four Councils. Some co-operation and sharing is already happening between ESCC and SCC and this would continue and grow across all partners. However, there are risks to resilience in each of the services and additional pressures already mean that locums or agency staff are being used, or work is being put out to external providers with consequent cost implications.

Each Legal Service has delivered its own savings and efficiency improvements over a period of years and it is increasingly difficult to find additional savings without potentially weakening the service. The ability to make efficiencies through economies of scale are limited. Services do not have spare capacity. To enable them to generate income, and with increasing pressure on budgets it is unlikely that the status quo can be maintained. Based on what has been achieved to date between ESCC and SCC, this option would not fully exploit the greater potential that four Councils have working together.

#### **b) Outsource the service**

Each Council could outsource its legal support to a commercial provider or (more likely) to a number of providers, possibly through a managed service contract. This would mean that Councils only pay for the service they need and there would be no built in staff costs. Additional benefits, and a better overall price, may be possible if all four Councils outsourced their legal services.

However, there is not a developed market of providers for the full range of services local authorities require and it is likely that multiple contracts would be needed. An EU procurement process would be required to demonstrate value for money and a reduced cost. Procurement would involve a substantial piece of work over a period of months, delaying any potential benefits and would be likely to involve a TUPE transfer of staff to a new provider(s). It is unlikely that external providers would agree a fixed price or fees because Legal Services are primarily demand led and both volumes and complexity are notoriously difficult to predict. Hourly rates are the preferred charging model for most legal service providers

Councils would need to retain a Monitoring Officer who would be the first call for advice and support, and the influence and support that in-house legal team provides to each authority should not under-estimated. This often extends well beyond purely legal advice, for example in terms of policy and softer decision making.

Previous tendering exercises across all participating Councils that have consistently demonstrated that the cost of external providers is greater than in-house provision. Outsourcing the service would not generate income which would help reduce costs further.

## **7. Options for a shared legal service**

7.1 Local Authorities working together is a well established approach and will enable us to achieve efficiency gains whilst continuing to provide the high level of service that we currently deliver to our Councils and other partners. A shared service will achieve the Vision and objectives that have been set out earlier, and will result in an overall reduction in the cost of the service. This is the preferred model.

7.2 A number of structures could be used to deliver a shared legal service. Local authorities are able to discharge their functions through a committee, a sub-committee, an officer or by any other local authority (Part VI, Local Government Act 1972). A shared legal service could therefore be managed in the following ways:

### **Option 1 – Joint Committee model**

7.3 Ss101 and 102 LGA 1972 set out the power for local authorities to delegate a function to a joint committee. S102 LGA 1972 allows two or more local authorities to appoint a joint committee:

- To discharge any function of the appointing authorities (s102(1)); and
- To advise on the discharge of any function of the appointing authorities (s102(4)).

7.4 The appointing authorities are free to determine the number of members of a joint committee, their term of office and the area within which the committee are to exercise their authority. The authorities can also include persons who are not members of the appointing authorities as co-opted members of the joint committee. The authorities can agree how the expenses of the joint committee will be accounted for.

### **Advantages of a Joint Committee model**

- Joint Committees permit the authorities to retain member-level control over the arrangements, which may be attractive politically.
- Joint Committees are scheduled employers to the Local Government Pension Scheme, enabling staff to be ring fenced for pension purposes. This allows the partners to determine the actual cost of the arrangements and their respective contributions more accurately.
- The committee model of governance is familiar for local authorities.
- It is a relatively straightforward model to establish and non-threatening to staff as it does not involve a transfer of employment.

### **Disadvantages of Joint Committee model**

- This model is potentially less scalable than other models as the constitution of the Joint Committee would potentially need to be reviewed with each new Partner.

- A Joint Committee has no corporate status and cannot hold property or enter into contracts. Any contracts will have to be entered into by one or more of the Partner authorities directly. The Joint Committee would need to make provision for sharing the benefit and burden of such contracts.
- As the Joint Committee cannot employ staff directly it can mean cultural change is slower to achieve.

### **Staffing issues in a Joint Committee model**

7.5 Staff remain employed by their current employer in this model. New employees are employed by one of the Councils. Under s113 LGA 1972 the partner authorities can agree to make their staff available to the other authorities. Consultation with staff would be required prior to entering a s113 agreement. The due diligence exercise will determine the process for deciding which Council becomes the employer for new posts and posts shared with the partners.

7.6 In order to achieve integration, and to ensure that the benefits of being a shared service are realised, secondments could be considered, for example at manager level or for specific teams, to develop an integrated team and/or centres of excellence.

7.7 In this model there is no new employer or corporate structure to define the new service. This means the launch as a new service would require other strategies to achieve a cultural change and to practically run the services as a genuinely single shared service.

### **Current Solicitors' Regulation Authority (SRA) issues with a Joint Committee Model**

7.8 Under a Joint Committee model, the authorities would be able to provide legal services to each other and to other public bodies. In respect of work undertaken for each other, procurement rules would not apply. 'Public bodies' are defined in the Local Authority Goods and Services Act 1970 and include many of the organisations the Councils would be interested in providing services to, such as Clinical Commissioning Groups (CCGs) and academies. Trading with these bodies under the Act can generate a profit.

7.9 Solicitors' Regulation Authority (SRA) Practice Rule 4.15 currently supports local authorities providing advice to such public bodies – it sets out that *'If you are employed in local government, you may act (a) for another organisation...to whom the employer is statutorily empowered to provide legal services.'* This is subject to a number of conditions set out at Rule 4.15 (b)-(g)). For example, in relation to charities, a requirement that the objects of the charity relate wholly or partly to the employers area.

7.10 However, in relation to other types of external work, the Legal Services Act 2007 and the SRA Practice Framework Rules prohibit in-house local authority solicitors from providing 'reserved legal activities' (broadly advocacy, litigation and conveyancing) to 'the public or a section of the public'. To the extent that the shared legal service wishes to provide 'reserved legal activities' to 'the public or a section of the public', (there is currently a lack of clarity about what constitutes 'public' ) it must be authorised and regulated as a solicitors' practice. This can be achieved by providing the service through an Alternative Business Structure (see Option 4).

Alternatively, a waiver could be sought to act for bodies that are currently excluded. This has been an uncertain and lengthy process to date. This would particularly effect our legal services' ability to provide legal support to Council services should they be outsourced.

7.11 The situation looks set to become yet more complex and more restrictive for in-house local authority legal teams. Recent changes may have the effect of limiting the work that can be undertaken by local authority legal teams for other public bodies to 'unreserved' legal work, which would exclude us from providing core services such as litigation, conveyancing and court advocacy.

### **Option 2 - Lead Authority Model**

7.12 S101 (1) LGA 1972 allows a local authority to delegate the delivery of a function to another local authority. This would therefore enable the authorities to appoint a 'lead' to take responsibility for delivering the function on behalf of the other authorities. Each authority then commissions the service from the lead authority. An inter authority agreement/delegation agreement is required to govern the shared service.

#### **Advantages of a Lead Authority Model**

- This model provides clarity of direction for the new legal practice. One authority is responsible for the structure and establishment of the new service. The service is delivered and managed within the decision making framework of the lead authority. A clear, visible, change with clear leadership.

#### **Disadvantages of a Lead Authority Model**

- Procurement rules will apply if the model creates a commercial arrangement between the lead authority and the Councils to which it provides legal services.
- This model could be viewed as one authority taking control, or as a loss of control by other authorities which both staff and Members may be uncomfortable with.
- In this arrangement the balance of risk between the lead authority and its partner Councils would need to be evenly distributed and would require managing through a robust agreement, which itself would increase the risk of the arrangement being perceived as a commercial one.

#### **Staffing issues in a Lead Authority Model**

7.13 Staff would either TUPE to the lead authority or could be seconded. A formal consultation process would be required. Staff from the lead authority would then be made available to the other authorities under Section 113 LGA 1972, enabling all partner authorities to delegate decisions to them as if they were their own staff.

## **Current and future SRA issues with the Lead authority Model**

7.14 The same SRA restrictions apply to this shared services model as to the Joint Committee Model.

### **Option 3 - Putting officers at the disposal of another authority**

7.15 S113 of the Local Government Act 1972 enables the placing of staff of local authorities at the disposal of other local authorities. In order to utilise this option, an authority needs to enter into an agreement with another authority for the purpose of placing one or more of their staff at the disposal of the other for the purpose of carrying out their functions on such terms as the authorities may agree.

#### **Advantages of a s113 only arrangement**

- Such an arrangement would be simple and quick to implement.
- There would be minimum upheaval for staff.
- There would not be a need to delegate functions, which may be attractive to Members and reduces the risk carried by any one authority.

#### **Disadvantages of a s113 only arrangement**

- A risk arising from using this legal power is that it might damage the commitment on all sides to the shared service and restrict the opportunity for change and development that will be needed going forward. It would be challenging to achieve more than a very informal collaboration with this approach - for example passing work to each other when over-stretched, sharing training and office space.
- The SRA limitations would be the same as for the Joint Committee and Lead Authority Models – ie not able to pursue external work for the public or a section of the public and, possibly if the SRA rules change, not able to work for other public bodies.

### **Option 4 - Alternative Business Structures**

7.16 Since the introduction of the Legal Services Act 2007 it has been possible for law firms to be owned by non-lawyers and non-legal businesses. These are known as 'Alternative Business Structures' or 'ABS' and must be licensed by the SRA.

7.17 An ABS is a limited company subject to normal company regulations. There is an additional requirement that they are regulated by the SRA to conduct legal business. The licensing procedure is designed to ensure that the owners of the ABS are fit and proper persons to own a legal business and that the procedures in place to fund the company mirror those of a conventional legal practice, with the object of protecting clients and money. A local authority shared service ABS could be jointly owned by each of the constituent Councils but would need

to comply with propriety controls set out by the SRA. The practice would have to be managed by fit and proper persons as defined and approved by the SRA.

7.18 One important feature of an ABS is the requirement to put in place full regulatory requirements which do not currently apply to in-house legal services. These regulatory requirements are likely to incur extra costs through the additional resourcing for compliance requirements and include:-

- Anti-money laundering rules and procedures;
- Holding client money - full compliance with the Solicitors' Accounts Rules including separate banking arrangements;
- Stricter conflict requirements;
- Broader insurance and indemnity;
- Requirement to appoint Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA); and
- Strict reporting and accountability arrangements to the regulator.

7.19 Prior to setting up an ABS the Councils would need to approve a business case and meet SRA requirements.

### **Staffing implications of an ABS model**

7.20 An ABS can directly employ staff and, depending on how legal work is performed, may also include staff transferring under TUPE from the Councils. Another option is for some staff to transfer to the ABS whilst others remain employed by the Councils, but provide services to the ABS for which the ABS is charged. It is not proposed that the ABS will directly employ any staff but that the Councils make available professional and support staff to enable the ABS to perform the legal work it has been given.

### **Advantages of an ABS**

- Although it is a form of outsourcing, the Councils would retain some control over the ABS.
- An ABS can provide a full range of legal services to an unlimited range of people and organisations – ie avoiding both the current and potential future SRA complications of the other shared service models. This may mean increased revenue income.
- An ABS would create a brand/identity in the market. This could attract business and make the ABS an attractive proposition for staff, assisting with recruitment and retention issues.
- A company structure limits risk away from the Council.

## Disadvantages of an ABS

- The regulation requirements and need for marketing would result in additional costs, increasing process and reducing the viability of the service.
- There are increased set up costs and time required would be longer than other models, creating the potential for loss of momentum.
- A robust business case would need to demonstrate that the start-up, setup and running costs would be outweighed by increased income from a wider market.
- If the main rationale is to target public service third party work, the ABS would need to tender for that work and may need to tender for parent authority work where Teckal<sup>3</sup> exemption does not apply. For this reason one option is to form an ABS only for the work undertaken on behalf of third parties, rather than for the Councils' work – retaining the rest in-house. This is the model that Essex CC has recently adopted.
- There is a tax/VAT liability which would not be incurred with other models. An ABS would pay corporation tax and be required to recover VAT in the way that other commercial organisations do.
- Time, financial investment and resources would be required for the set up with no guarantee that the SRA will grant a licence.

## 8. Preferred option

8.1 After considering advantages and disadvantages, the preferred option is:

- b) a Joint Committee model for the shared legal service; and
- c) development of the business case for Orbis Public Law Ltd as an ABS to work alongside the Joint Committee model.

8.2 The ABS will enable the shared service to work for anyone and appears to fit with the current thinking of the SRA.

## 9. Delivery principles

9.1 The development of Orbis Public Law will mean an ambitious programme of change to bring together four legal services in one single integrated service with a common culture, based on public service values underpinned by efficient, agile and modern business practices and thinking. Achieving this will not be without its challenges. This section sets out some key principles about how the single service will develop over time.

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<sup>3</sup> 'Teckal exemption' An exemption whereby an authority does not need to run a procurement procedure to give a contract to a legally separate but substantively 'in-house' provider.

**a) Leadership**

Strong and clear leadership is key to the successful delivery of the single service. Given the involvement of four partners, a common sense of direction and purpose is vital. This can best be achieved through clearly defined project objectives and clarity of roles and responsibilities.

**b) Culture**

Each Council recognises the need for a change of culture in the way that services are delivered, how we work together and how we respond to the demands of our customers. Ongoing engagement with staff and customers will be required across the practice to develop a shared culture. We need to recognise the different systems and practices in place, learn from what works well and manage our clients' expectations.

**c) An organic process**

Bringing together four different practices into one will not be achieved overnight. We need to recognise that this is a journey which will involve good liaison and communication both with staff and customers. Different aspects of the service are likely to develop through incremental steps and at a different pace. This model is well illustrated in a 5Cs model. As an example, ESCC and SCC practice areas are already working at the cooperation stage, largely achieved through goodwill and the understanding that develops from getting to know each other.



**d) Valuing our staff**

A change programme on this scale can be unsettling and challenging for staff. We will keep staff informed through regular communication, value their input and support them through the process. A number of externally led Change Management sessions have already been held which many officers have attended. They have been well received, providing staff with an opportunity to think differently and meet colleagues from other partner authorities.

**e) Monitoring Officers**

Each of the four partner authorities currently has a lawyer as Monitoring Officer at Head of Service, Director or Chief Officer level. It is appropriate that these officers and the statutory Monitoring Officer role remain outside the partnership and play a key role in directing, commissioning and overseeing work from the single service.



**f) Structure of the single service**

A revised management and practice structure will be necessary to achieve efficiencies and economies of scale. Various models will be considered. It is proposed that a new management team will be appointed to oversee a service-wide restructuring; this will take place within the first year. It is likely that there will be salary pressures on key senior roles which may be operating across a larger single practice.

**g) Practice leadership**

The single service will demand a high standard of leadership. The senior management team will need to share the Vision and possess the right range of managerial, commercial, innovation, change management and people skills necessary to deliver the new service.

**h) Conflicts of interest**

Arrangements will need to be made to ensure that any conflict of interest between the partner authorities is identified and addressed appropriately. The nomination of a locality manager at each site may be appropriate to facilitate this. This may not be a dedicated post but a role attached to a manager.

**i) Client demand management**

There will need to be a cultural shift in how our customers (primarily Council services) target and access legal advice. This may require standardising instruction pro-formas and enabling our customers to undertake more work themselves and be less reliant on legal support.

**j) Workflow**

A workflow portal or system will be necessary to ensure that all requests for work from our customers are prioritised, allocated to the most appropriate officer and dealt with efficiently and in a timely manner.

**k) Case Management platform**

In order for workflow to be efficient, seamless and co-ordinated, it is vital that one case management system is in place and used in the same way by staff working at all locations. Norwel is being used by SCC, has just been introduced at ESCC and is to be procured by BHCC. This will be the default case management system.

**l) Simplify, standardise, harmonise**

In order to maximise efficiencies and work well as a new team, it is important to learn from each other, make best use of what works well to create a simple, standardised operating environment.

## **10. Financial benefits and implementation costs**

10.1 Orbis Public Law will deliver benefits to the constituent Councils by combining resources to deliver economies of scale and build resilience. Spending on external resources can be reduced and additional capacity created, by removing duplication, streamlining management structures, making new appointments at an appropriate level for the work and from improving processes. The new single service will make financial savings whilst at the same time:

- investing in modern systems and working practices;
- building on our developing relationships and creating greater strength through partnering ; and
- retaining and developing our talented people.

10.2 The single service will be the mechanism to deliver and potentially exceed the existing target savings included within the Medium Term Financial Plan Savings of all four Councils. We estimate that the savings achievable from the proposed single service (through reducing costs and generating income) will be 10% of the combined net operational budget of the service. This means savings of around £920,000 per annum by year four (2019/20).

10.3 Achieving savings will require investment. Common technology and processes, such as Norwel (already in place at ESCC and SCC), will be needed to ensure seamless delivery of service. Some additional resource will be required to manage delivery of the programme, support organisational change and develop new ways of working; this will be met from existing budgets. Subject to the establishment of an ABS trading arm, investment will also be required to develop a service offering, market the service and spend time on networking.

## **11. Financial arrangements**

11.1 The financial arrangements of the single service, such as decisions required in relation to the sharing of investment, cost apportionment and savings, will be based on the proportionate size of each founding partner. The 'operational budget' of the single service will be the combined gross revenue budget for the in-house legal service of each of the four constituent authorities at 1 April 2016.

11.2 The amount that each authority contributes at 1 April 2016 must be sufficient that, at the start of the single service, each constituent authority could reasonably deliver a Legal Service at the standard previously supplied to their Council. This means that any savings each authority can reasonably make prior to 1 April 2016, can be taken by that authority alone. Thereafter, any savings become savings of the single service and will be managed accordingly.

11.3 The activities of the single service will be responsive to each Council's strategies and priorities, and to structural changes, including those driven by legislative change. Therefore, the financial arrangements will recognise that the sharing of costs will be subject to similar considerations. The single service will prepare and update the Operational Budget requirement on an annual basis, and seek approval from each council as part of the medium term planning process of each Council. The proportionate contribution from each partner may change over

time in accordance with changes in priorities or in light of structural changes within each Council

11.4 The methodology used to determine the appropriate apportionment of costs between the four partners will be developed using the same principles as those used in the Orbis partnership. All parties recognise that this methodology will need to be fair and transparent, take into account changes in demand and will be underpinned by a proportionate level of management information to support the mechanism.

11.5 From 1 April 2016, the cost of investment and implementation will be shared in accordance with the cost-sharing methodology. We recognise that there may be exceptions to this principle, particularly if one party has already invested in technology which has delivered benefits and therefore savings have been recognised already in appropriate budgets.

11.6 The broad principles underpinning the financial arrangement have been agreed by the four partners; a proportionate balance between risk and reward and a transparent approach to the sharing of costs and investment required. The broad principles will be further developed in a more detailed business plan report which will also include practical arrangements and implications of the partnership, including the frequency of financial monitoring reporting to each Council and treatment of in-year variances.

## **12. Programme management**

12.1 Over the coming months more work needs to be done to deliver our Vision. This work is being led by an Orbis Public Law Programme Board comprising the four Legal Services Head of Service/Directors/Chief officer with representatives from each authority. The Programme Board meets once a month and is responsible for:

- delivering the Vision and objectives of the shared service;
- ensuring that the programme is adequately resourced and managed; and
- that regular reports are made to each Council's Chief Executive.

12.2 A Programme Manager will report progress to the Board and highlight any concerns in terms of progress or resources against the timeline.

12.3 Six work streams have been set up to drive the necessary change.

<b>Work stream</b>	<b>Focus on:</b>
Governance and organisational structure	Developing a single service operating model Working with the Solicitors Regulatory Authority (SRA) framework Operational and management structure Constitution, terms of reference of the operating model Procurement issues - standardising Standing Orders HR/Employment issues
Staff	Communications Change Management Staff consultation Staff welfare
Work flow and customer perspective. Practice Management	Developing standardised working practices Communication and liaison with customers Aligning office manuals and practice procedures Case Management system (Norwel)
IT	System infrastructure and long term alignment of all systems
Finance	Budget alignment Principles of cost sharing and savings
Alternative Business Structure	Assessing the market for potential customers Preparation of ABS business case

### **13. Equality implications**

13.1 At this point there are no identified equality implications in terms of establishing a single Legal Service. There may, however, be equality implications around whatever model is adopted for the service. We recognise that there may need to be a Pay and Workforce Strategy to underpin a proposed operating model. Equality and Diversity principles will be fed into the design of Orbis Public Law.

### **14. Risk Assessment**

14.1 The Councils anticipate that the arrangements will remain in place on an indefinite basis. There is a risk therefore that there may be significant changes to each Council which impacts upon the services that are required to be delivered by a single service. Governance arrangements will need to recognise that this may be the case.

14.2 Establishing the partnership and implementing the organisational, process and technology changes required to deliver the Vision and achieve target savings may impact on the provision of services to each Council – both in terms of supporting ‘Business as Usual’ activities and providing strategic advisory support for wider transformational change within each Council. The partnership will work with each Council to develop a high-level timetable of change to minimise any adverse impact.

14.3 It is important for all the partners to be on the same IT operating platform. There is a risk to the operational management of the shared service if this does not happen on a timely basis. In particular, SCC currently uses Lotus Notes for email and other functions but needs to be on a Microsoft product so that the case management system (which relies on email) can be used in the same way by all partners. We are working closely with the Orbis IT team to ensure this is prioritised.

14.4 Creating a partnership by simultaneously bringing together four Legal Services of this size is unprecedented. Working together on the scale proposed in the single service could mean there are conflicts of interest, or the practice could become unwieldy to manage. There need to be clarity about the finite size of the shared service and how practical it is to bring in additional partners, particularly in the short-term.

14.5 There is a risk that the partnership does not deliver the full extent of the savings set out in this business case. The four partner Councils recognise that the first year of operation will be a 'start-up' phase and that careful consideration will need to be given to growth.

14.6 The organisational, process and technology changes required, together with concerns about job security as changes to management are made, may have an adverse impact on staff morale and increase turnover. The single service partners will ensure that communication, consultation and engagement remain a priority for the programme. Staff will be involved in developing the organisational design which will help to emphasise that the single service will lead to enhanced opportunities for staff and a strengthening of internal skills.

**Appendix 1 Orbis Public Law – Common work areas**

<b>Work Area</b>	<b>ESCC</b>	<b>SCC</b>	<b>BHCC</b>	<b>WSCC</b>
<b><u>Litigation</u></b>				
Civil Claims against the Council and others (excluding Highways Claims)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Civil Claims (Highways)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Debt Collection	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Prosecutions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Miscellaneous Civil Litigation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Judicial Review Claims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b><u>Employment</u></b>				
Employment Advice and Tribunals	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Employment Advice to Members Appeals Panels	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
TUPE and Pensions transfers for outsourced services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b><u>Education</u></b>				
SEND Tribunals and pre-tribunal advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Miscellaneous Education Advice e.g. Exclusions, Transport, Admissions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Academy Conversions (Commercial Transfer Agreements)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b><u>Information</u></b>				
Information Governance Advice and representation at Information Tribunals	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
LGO Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Freedom of Information and Data Protection Advice and FOI decision reviews	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

<b>Planning</b>				
Planning Agreements	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Miscellaneous County Planning Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Determination of Village Green Claims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Registration of Common Land	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Enforcement Notices	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Listed Buildings & Conservation Area Advice	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Assets of Community Value Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Advice on Building Control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Attendance at Planning Committee	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Highways and Environment</b>				
Highway Agreements	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Highways Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Flood and Drainage Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Rights of Way and Village Green Advice (but not determination of claims)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
General Environmental Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Traffic Orders	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Property</b>				
Commercial Leases / Licences	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other leases including agricultural	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Freehold acquisitions and disposals	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Compulsory Purchase	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Registration of Property Charges for Adult Social Care	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Property Transfer for Pension Fund	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b><u>Contracts and Procurement</u></b>				
Contracts	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Procurement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Advise Member Advisory Procurement Board	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Advise to LEP as Accountable body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b><u>Children</u></b>				
Care Proceedings including pre-proceedings and advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
EPOs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Adoption Advice and Opposing Applications for Leave	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Miscellaneous advice e.g. care leavers, no recourse to public funds, disclosure and LA involvement in private law cases	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b><u>Adults</u></b>				
Adult Protection Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Court of Protection Proceedings	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Mental Health Advice	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ordinary Residence Claims	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b><u>Major Commercial Projects</u></b>				
Development Agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Academy Conversions (Development Agreements, Design & Build Contracts, Land Assembly Issues)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Site Assemblies	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b><u>Licencing</u></b>				
Licencing Advice /Appeals/Enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



(To include: Alcohol, gambling, Taxis, Sex Establishments)				
Highway Licencing Advice /Appeals/Enforcement (To include: A Boards, Tables & Chairs, hoardings, Skips, Scaffolding)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b><u>Other</u></b>				
Local Government Law e.g. Powers, Committees etc.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Local Government Advice to include: Advice on Elections and support to the Returning Officer Constitution and Support to the Constitution Working Group	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Standards-To include conduct of Investigations & Advice to Member Panels	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Governance Advice (e.g. Whistle Blowing/Conflict of Interests)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HMO Advice /Appeals/Enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Environmental Health Advice /Appeals/Enforcement (To include: Noise, Nuisance, smoking)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Leasehold Enforcement (Managed Properties)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Advice on Pension Schemes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Management of Council's insurance and insurance broker services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Housing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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