

# REPORT FOR: **CABINET**

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<b>Date of Meeting:</b>	20 November 2014
<b>Subject:</b>	HB Public Law Limited
<b>Key Decision:</b>	No
<b>Responsible Officer:</b>	Tom Whiting, Corporate Director of Resources
<b>Portfolio Holder:</b>	Graham Henson, Portfolio Holder for Performance, Corporate Resources and Policy Development
<b>Exempt:</b>	No, except for the Appendices which are exempt from publication under paragraph 3 of part 1 of Schedule 12A to the Local Government Act 1972 (as amended) as they contain information relating to the financial or business affairs of any person (including the authority holding that information) and legally privileged information
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	None
<b>Enclosures:</b>	Appendix A – Shareholder Agreement - Exempt Appendix B – Articles of Association - Exempt Appendix C - Advice from Leading Counsel - Exempt

## **Recommendations:**

Cabinet is requested to:

1. Note the formation of HB Public Law Limited ('HBPL Ltd') under the provisions of the Localism Act 2011 and instruct the Corporate Director of Resources, following consultation with the Portfolio Holder for Performance, Corporate Resources and Policy Development, to agree the business plan for HBPL Ltd.
2. Note Harrow's ownership of 100% of the shares in HBPL Ltd.
3. Approve the appointment of Hugh Peart, Director of Legal and Governance Services and Jessica Farmer, Head of Legal Practice, as Directors of HBPL Ltd and also the appointment of Hugh Peart as its Chief Executive.
4. Approve the appointment of the Director of Legal and Governance Services as Harrow's shareholder representative in relation to HBPL Ltd save for the exercise of the Reserved Powers in the Shareholder Agreement.
5. Subject to Council approval of the loan, authorise the Director of Finance and Assurance to make available appropriate working capital to of up to £100,000 to HBPL Ltd by means of a loan, to be called down as required.
6. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Performance, Corporate Resources and Policy Development, to execute a guarantee agreement between Harrow Council and HBPL Ltd whereby the Council underwrites HBPL Ltd's liabilities up to an amount agreed by the Director of Finance & Assurance.
7. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Performance, Corporate Resources and Policy Development, to execute a supply agreement between Harrow Council and HBPL Ltd.
8. Note the provisions of the shareholder agreement between Harrow Council and HBPL Ltd which forms part of its governance arrangements. (Appendix A).
9. Authorise the Corporate Director of Resources, following consultation with the Portfolio Holder for Performance, Corporate Resources and Policy Development, to make any amendments as required and to sign

the shareholder agreement between Harrow Council and HBPL Ltd.

10. Note the terms of the memorandum and articles and accounting reference date of HBPL Ltd. (Appendix B)
11. Note the changes to the Constitution agreed by Council on 13 November and the proposal under consultation to vary staff terms and conditions to enable HBPL Ltd to comply with its licence requirements.
12. Instruct the Corporate Director of Resources, following consultation with the Portfolio Holder for Performance, Corporate Resources and Policy Development, to undertake a review during the first year of trading of HBPL Ltd and to bring any recommendations back to Cabinet for approval at its December 2015 meeting together with the business plan for the second year of trading.

**Reason: (for recommendations)**

To ensure compliance with company law and SRA requirements following the incorporation of HBPL Ltd and the granting of an ABS licence.

## **Introduction**

This report sets out the rationale for forming HB Public Law Limited ('HBPL Ltd') under the Localism Act 2011, the steps that have been taken to comply with company law requirements and further steps that are needed before it can operate as a separate law firm.

It also details the decision by the Solicitors' Regulation Authority ('SRA') to grant an Alternative Business Structure ('ABS') licence to HBPL Ltd and measures necessary to ensure compliance with SRA rules.

The strategy for delivering high quality legal services to Harrow and Barnet that offer value for money is to grow the shared service and to provide legal services to outside organisations.

## **Background**

HB Public Law ('HBPL') is an in-house legal team which since 1 September 2012 has been providing legal services to both Harrow and Barnet Councils.

All councils are facing heavy cuts in the next four years. Both Harrow and Barnet Councils each have to make an overall savings in the order of £75m by 2019/20 as a result of the ongoing period of austerity around public sector finance.

At the same time, demand on local services continues to increase, driven by a growing population, particularly the number of young and older residents. Councils recognise that they cannot simply meet the increasing levels of demand for their services without major changes. These include new methods of working, partnership arrangements, outsourcing services, becoming more commercial by setting up trading companies and joint ventures with the private sector. However, there will be an inevitable cut in non frontline services.

The current economic climate means that HBPL is facing the prospect of its budget being cut along with all Council services as it looks to deliver its share of the savings that will be required in coming years.

HBPL will also face pressures from a potential reduction in the demand for legal services should local authorities outsource their work to private companies or to other parts of the public sector.

If HBPL delivers its share of budget reductions simply by cutting staff then this will damage the resilience and quality of the in house legal service. Unless the underlying demand for legal support drops, this work would end up being outsourced to private law firms which would inevitably be more expensive. Resilience would also be lost as there would be less ability to maintain in house legal expertise when it is required, which would further increase reliance on expensive law firms and barristers.

The strategy for HBPL is therefore to seek to grow the shared Legal Practice by working with more councils and by providing legal services to other organisations. This will in the long term be the best route to delivering a high quality and value for money legal service to Harrow and Barnet.

The restriction on local authorities' ability to trade has been gradually eased over the years. Under the Local Authorities (Goods and Services) Act 1970 local authorities can offer services to any public body within the meaning of the Act. This includes any other local authority.

However, the definition in the Act and subsequent subordinate legislation can be restrictive. For example, when HBPL was asked to undertake work for the North West London Hospitals Trust, it was prohibited from doing so as the NWLHT was not defined as public body in accordance with the 1970 Act.

The Localism Act 2011 brought in a general power of competence. This allows a local authority to undertake for a commercial purpose any activity for which it has a general power. Any enterprise has to be conducted through a company.

While this gave freedom to some areas of a local authority to trade, in practice HBPL could not do so because of the rules of the Solicitors Regulatory Authority prohibit in house lawyers working for anyone other than their employer.

Since the introduction of the Legal Services Act 2007 it is possible for law firms to be owned by non lawyers and businesses which are not law firms. These are known as Alternative Business Structures (ABS).

The combination of the Localism Act and the Legal Services Act means that Harrow Council can set up a wholly owned company offering legal services for a commercial purpose. This allows it to offer legal services to other parts of the public sector and

to commercial companies who are carrying out local authority functions as part of an outsourcing arrangement.

In 2013 HBPL Ltd was formed under the Companies Act 2006. The Council is the 100% shareholder. The aim was for HBPL Ltd to apply to the Solicitors Regulatory Authority to obtain an ABS licence.

Harrow Council was the first local authority to make an application to the SRA for an ABS. The application was made in July 2013. All previous applications had involved commercial companies setting up or investing in law firms. For example the hauliers Eddie Stobart set up a legal firm and Capita bought into an existing legal firm.

Given the ground breaking nature of the application, it took the SRA over a year to agree to licence HBPL Ltd as an ABS. The consent was given on 8 August 2014 with effect from 1 December 2014. Officers are confident that HBPL Ltd can make a competitive offering in the legal services market, given the expertise it can make available, and its cost base, which is lower than some competitors. Initial discussions with potential clients, and the success of joint bids for work with Bevan Brittan (below) suggests that this confidence should translate into real work for the new entity, which will allow it to establish itself in the market.

In order to bid successfully for work in the future, HBPL has formed a close working relationship with Bevan Brittan a leading public services law firm. The aim is to share training and placement opportunities as well as to actively jointly bid for work in the public sector.

### **Options considered**

HBPL has continued to pursue shared services agreements with other local authorities. The practice carries out small discrete pieces of work for other local authorities on an as and when basis. Building further shared service arrangements remains a core part of the strategy for growing HBPL.

However, it is believed that even with additional local authority work, this will not secure the resilience and viability of HBPL and its services to Harrow and Barnet.

All local authorities are under the same financial pressure and without the ability to follow outsourced work and to trade more widely in the public sector, the future of HBPL cannot be secure. The ability to pursue such work is a significant growth opportunity for HBPL which the Council is looking to support in order to secure its objective of maintaining a high quality legal service offering value for money. The Council can not trade more widely as described above without putting the ABS in place.

### **Current situation**

It is proposed that all legal work currently undertaken for both Harrow and Barnet Councils will remain with the in house legal team (HBPL) and will not be dealt with by the HBPL Ltd.

HBPL Ltd has been established under the provisions of the Localism Act 2011 for commercial trading purposes and Harrow Council owns 100% of its shares. A

number of steps now need to be taken to ensure that it complies with both Company Law and the SRA's requirements for the ABS. These are set out below:

## **Governance**

The SRA has strict requirements in relation to the ownership and control of an ABS and places restrictions on the persons who may have a material interest in or control of the company. These requirements do not easily fit a local authority framework. This has necessitated extensive discussions with the SRA in order to agree an appropriate governance structure that would avoid an overly cumbersome approach to their requirements.

The SRA requirements will be met by authorising the Director of Legal and Governance Services to have day to day control of the company and exercise Harrow's voting rights as shareholder. Reflecting this requirement, the Director's delegations have been amended by Council to include "to take all decisions in relation to HB Public Law Limited", and the power of the Head of Paid Service to exercise any function delegated to any other officer has been removed in respect of HBPL Ltd.

In order to provide for accountability to the Council, Cabinet will agree the annual business plan of HBPL Ltd. Additionally, there will be a shareholder agreement between Harrow Council and HBPL Ltd setting out the respective roles of the local authority and the Director of Legal & Governance Services who will have day to day control of the ABS. This is attached at Appendix A. The Council also owns 100% of the shares in HBPL Ltd. It is proposed to delegate to the Corporate Director of Resources in consultation with the Portfolio Holder for Performance the signing of the shareholder agreement.

## **Articles of Association**

The Articles of Association, (attached at Appendix B), are a key company document and need to be approved by Cabinet. They set out the objects of the company, which in this case is to provide legal and related non-legal services to members of the company and third parties in both the public and private sectors. Additionally they deal with the appointment of Directors and a Chief Executive as well as termination of these appointments.

The position was that as the ABS application was uncharted territory for the SRA, it advised that only senior lawyer managers from within the practice be proposed as directors, as they were already regulated by the SRA. The SRA have now approved Hugh Peart and Jessica Farmer as directors. It is also proposed that Hugh Peart should be appointed as Chief Executive. The appointment of additional Directors will be considered and if appropriate discussed with the SRA in the coming year.

## **Business Plan**

As required by both the Localism Act and the SRA a Business Plan is being prepared setting out the governance arrangements, finance, marketing, and regulatory matters. Cabinet is requested to instruct the Corporate Director of Resources in consultation with the Portfolio Holder for Performance, Corporate Resources and Policy Development to agree the business plan for HBPL Ltd for the first year of operation.

## **ABS Compliance**

An ABS is required to appoint a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA). The role of the COLP is to oversee compliance with the SRA's regulatory requirement (other than those relating to accounts rules) which the Head of Legal Practice will perform, and the COFA to oversee compliance with the SRA's accounts rules, which the Director of Legal & Governance Services will perform.

## **Staffing Issues**

As HBPL Ltd secures legal work, it is proposed that Harrow Council will make available professional and support staff to enable the work to be done. In return HBPL Ltd will pay Harrow Council an agreed fee, reflecting both the salary costs of the individual and overheads such as IT, accommodation, pension, etc. This arrangement will be set out in a supply agreement between the Council and the company, and appropriate authority is sought to execute this agreement.

In order for Harrow staff to work for HBPL Ltd they have to comply with SRA rules and its definition of employees. In practice this means that employed solicitors and employed non legal staff can work for HBPL Ltd subject to an agreed variation of their contracts of employment. Employed barristers and legal assistants will need joint employment contracts in order to provide legal services to HBPL Ltd; and a solution is being considered to allow agency lawyers to provide services to HBPL Ltd.

Harrow is currently consulting both professional and support staff on proposed changes to their conditions of employment either in the form of a variation to their contracts of employment or the use of joint contracts.

Consultation will also take place with Business Support staff so that business support functions supplied to HBPL Ltd meet SRA requirements.

## **Financial Issues**

HBPL has and HBPL Ltd will have professional indemnity insurance.

There will be supply agreement between the Council and HBPL Ltd to pay for services provided by the Council to the ABS such as staff time, premises, IT and equipment.

HBPL Ltd will be subject to VAT and Corporation Tax and, subject to the requirements of the Solicitors Regulatory Authority and where relevant, the Council's Financial Regulations will be followed by HBPL Ltd.

HBPL Ltd will not be utilising the Council's SAP system to manage its financial affairs. Separate software will be purchased.

At present HBPL Ltd will not form part of the Council's overall statement of accounts. If the turnover of HBPL Ltd increases to over £5m (or 1% of the Council's gross expenditure) then it will form part of the Council's statement of accounts and a set of "Group Accounts" will need to be prepared.

Initially HBPL Ltd will procure its own auditors. If it formed part of the Council's group accounts then it will make sense for HBPL Ltd to utilise the Council's auditors at the point.

The Council is requested to provide two types of corporate and financial support to HBPL Ltd:

1. Given HBPL Ltd is a new company with no track or credit record, suppliers might be reluctant to do business with it, or staff to work for it. A Council indemnity would reassure them that it will underwrite its activities to enable it to establish a track and credit record such that the guarantee might lapse over time.
2. HBPL Ltd has bank accounts, but no working balances. A working capital loan is requested to facilitate the company's cash flow and allow it to operate from its first day. As cash reserves are built up this loan may become superfluous, but without it the company will not be able to trade. Details of the amount, interest and repayment will be agreed with the Director of Finance & Assurance. It is anticipated that this will be up to £100,000 to be called down as required. A report has gone to the Council meeting of 13 November 2014 seeking approval of the loan.

## **Implications of the Recommendations**

### **Equalities impact**

Members should have due regard to the public sector equality duty when making decisions. It is not considered that the recommendations before Cabinet have specific equalities implications, or that the proposed variations to staff terms and conditions will have any material impact on those with a protected characteristic. This will however be kept under review as the project develops.

### **Legal Implications**

In setting up the company it was necessary to comply with company law provisions and provisions set out in the Localism Act 2011 which relate to Local Authority Companies. In making application for the ABS licence it was necessary to comply with SRA Rules.

In order to avoid a conflict of interest HBPL has not given legal advice on this report. Independent legal advice has been obtained from leading counsel on both the structure of the ABS and the employment issues and both documents are attached at Appendix C.

### **Performance Section**

The creation of the new ABS will help the Council to meet its financial targets in future years for generating income and delivering savings. The ABS helps the Council achieve this by expanding the market to which Legal services can be



supplied. Monthly monitoring arrangements for the ABS are included in the shareholder agreement and these will help the Council to ensure the ABS is delivering against the agreed Business Plan.

External performance frameworks will also apply through regulation by the SRA and also through Lexcel accreditation.

### **Risk Management Implications**

HBPL Ltd is a new venture for Harrow, with no guarantee of success. If it fails there will be reputational damage, and Harrow may be unable to recover the costs in either setting up or running the company. However given the market advantage enjoyed by HBPL Ltd being one of the first such entities in the country, and the real likelihood of it securing work, it is considered a risk worth taking.

By way of risk mitigation, the new entity will be closely monitored by the SRA, via a relationship manager, and HBPL Ltd Directors are bound by various company law duties to ensure the company remains viable and does not become insolvent. In addition HBPL Ltd will hold professional indemnity insurance to cover any claims for negligent advice.

### **Council Priorities**

This initiative supports the Council's approach to:

- Making a difference for the most vulnerable
- Making a difference for communities
- Making a difference for local businesses
- Making a difference for families.

The Council wants to be a modern, efficient Council, able to meet the challenges ahead. It aims to protect frontline services by delivering support functions in the most cost effective way, including collaborating with other boroughs on shared services and procurement opportunities. This initiative supports these aims as it puts the legal service in a much stronger position to develop services for other organisations and widening its client base, thereby providing a resilient legal service so that the Council can focus resources into front line services.

## **Section 3 - Statutory Officer Clearance**

Name Simon George	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 10 November 2014		
Name: David Reade QC	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 8 November 2014		

## Section 4 – Performance Officer Clearance

Name: Alex Dewsnap



Divisional Director  
Strategic Commissioning

Date: 11 November 2014

## Section 5 – Environmental Impact Officer Clearance

Name: Caroline Bruce



Corporate Director  
(Environment &  
Enterprise)

Date: 11 November 2014

**Ward Councillors notified:**

**NO**

## Section 6 - Contact Details and Background Papers

**Contact:** Linda Cohen, Senior Lawyer - Employment & Governance

**Tel:** 020 8424 1289

### Background Papers:

Loan to HBPL Ltd. Paper to Council on 13 November 2014

<http://www.harrow.gov.uk/www2/ieListDocuments.aspx?CId=288&MId=62370&Ver=4>

**Call-In Waived by the  
Chairman of Overview  
and Scrutiny Committee**

**NOT APPLICABLE**

*[Call-in applies]*