

**Briefing Note - Legal and Democratic Services Budgets****1. Background**

- 1.1 The directorate consists of Democratic Services which has 21.5 FTE staff and Legal Services which has 65.01 FTE staff.
- 1.2 The Glamorgan Archives (a shared service funded by six Local Authorities) are a member of the Directorate Management Team and regularly report to the Director, they have 15 FTE staff. They are governed by the Glamorgan Archives Joint Committee which meets four times a year and is currently serviced by Cardiff Democratic Services. Their budget is separate and so not covered in this report.
- 1.3 Democratic Services includes the Committee and Members Services and Scrutiny teams, supporting the decision-making processes of the Council and Members carrying out their committee and ward work. It is the Role of the Democratic Services Committee to ensure the Democratic Services functions of the Council are adequately resourced (see **Appendix 5**). The Democratic Services function also includes Electoral Services which carry out the annual electoral registration canvass, publish the electoral register and deliver elections. The Electoral Services budget is the responsibility of the Returning Officer and as a Council function, like planning applications and licensing, is not subject to scrutiny.
- 1.4 Legal Services has 3 teams Community, Litigation and Property & Procurement, each managed by an Operational Manager. The Community and Property and Procurement teams are further sub-divided with an additional Operational Manager to reflect the two legal specialisms and manage the work demands of the teams. The work done by the Legal Services is either statutory work, for example advising on and dealing with children's and adult safeguarding, land charges, education admission appeals, planning matters, licensing matters, defending employment tribunal actions or discretionary work relating to corporate priorities which the Council has discretion over, such as enforcement work, debt

recovery, prosecutions, road traffic orders, procurement, or regeneration.

- 1.5 In addition, the Director fulfils the statutory Monitoring Officer role for Cardiff Council and the City Deal Joint Committee and is the Deputy Returning Officer for elections, (the Chief Executive is the Returning Officer). The Principal Solicitor Litigation is the Council's Deputy Monitoring Officer. The Monitoring Officer role is responsible for ensuring the Council acts lawfully, and for dealing with ethical and corporate governance matters, such as breaches of the Councillor Code of Conduct and reviewing the constitution. The Director is also the Senior Responsible Officer for ensuring the Council complies with the Regulation of Investigatory Powers Act.
- 1.6 The Policy Review and Performance Scrutiny Committee (PRAP) has requested a briefing on the challenges and pressures in relation to the legal and democratic services budgets. In particular
- The Governance & Legal Services directorate budget in total,
  - An explanation of the reasons for current spending pressures,
  - How this impacts on other services' budgets, and
  - What you will need to request for next year's budget round to cover the directorate as a whole.

The Chair considers that Members have expressed concern about the impact of legal services budget challenges on scrutiny and members services budgets and on quality of services.

- 1.7 The PRAP Letter dated 10<sup>th</sup> June addressed to Cllr Weaver states:
- Governance & Legal Services – Members expressed surprise at the size of the overspend in Governance and Legal Services and were keen to establish what the implications are for the current budget year. Officers advised there had already been an in-year re-alignment and an increase in the budget for 2021/22. Children's services is very much needs based reflecting an increase in complex child cases. It was stated that a precise forecast of the implications for 2021/22 may be difficult. We note that the Finance team has worked with Legal Services to ensure the service is doing what it can to operate within budget. This service area has expanded in previous years in an attempt to grow its own expertise. We note that there have been recruitment challenges during the year. The Committee requests detailed assurance that this service is looking closely at this substantial increase in demand for its services and the high

unanticipated costs and pressures placed on its budget and that of the Council as a whole. It also expects that the trend in increasing work demand from Children Services and other departments is factored into all future spending projections.

## 2. Current Budget Position

- 2.1 For 2021/22 the directorate budget for legal and democratic services is £4,657,000, with income of £1,172,000. The legal services budget is £2,644,000 and the Democratic Services budget is £841,000. The budget monitoring position for month 6 is below.

GLS	Net Budget	Outturn	Variance	Change
	£000	£000	£000	£000
Monitoring Officer	223	220	(3)	0
Legal Services	2,644	2,819	176	(56)
Democratic Services	841	829	(12)	2
Electoral Services	464	464	0	0
Members Services	1,838	1,835	(3)	2
<b>Total</b>	<b>6,010</b>	<b>6,167</b>	<b>157</b>	<b>(52)</b>

- 2.2 The budgets for legal services and democratic services are managed separately and are brought together for the purposes of budget monitoring. There is no pressure on democratic services to spend less than its budget allocation to lessen the impact of the legal services overspend on external legal fees. The budget position is monitored monthly by the Directorate Management Team with assistance and advice from a budget accountant.

## 3. Legal Services Projected Overspend

- 3.1 At month 6 the projected spend on external legal fees is nearly £935,000 a projected overspend of £37,000. Table 1 in **Appendix 1** shows that over half of the budget has been spent in the first six months and if this continued it would mean a significant overspend. This is a risk that will continue to be monitored closely.

- 3.2 There are also projected overspends on the Law Library, the Case Management System, Subscriptions and printing. Along with External Legal Fees these contribute to the £176k overspend projection for Legal Services. They are all integral to running a Legal department and cannot realistically be reduced. These overspends have been overshadowed by the external legal fees over the last few years.
- 3.3 The Legal Services external legal fees overspend in 2020-21 was £285k against a budget of £598k. As part of the 2021/22 Budget process, the budget was increased by £300k to £898k to reflect the financial pressures in this area.
- 3.4 The nature of the work of the Community team on children's and adults safeguarding cases means there has continued to be a need to outsource some legal work. In the past some cases have had to be placed with an external firm of solicitors, but that is now rare with casework being carried out primarily inhouse. It is the advocacy work which is outsourced with counsel being instructed to represent the Council at hearings, which are increasingly lengthy and complex.
- 3.5 **Appendix 1** shows a table and graph of the accumulation of external legal spend since 2018/19. This is for all spend on external legal fees maintained by our Accountant. This will include everything that is coded to the 4 codes they use to monitor/analyses spend. The graph shows the monthly spend over three complete years and from this it can be seen the unpredictable nature of the expenditure.
- 3.6 The external legal fees budget was also intended to cover the need for other legal work to be outsourced, but it is largely spent on children's services cases. Where the work of other directorates requires external legal advice, either because the in-house team do not have the capacity or skills to provide it, the client department is asked to meet the costs and, in some cases, it is included in the capital spend of a project. Recent examples include specialist legal advice on the arena project, advice in relation to Cardiff Bus, and specialist advice on the clean air requirements.
- 3.7 In **Appendix 2** there are a series of graphs that show how spend on external cases is monitored within Legal Services. The information is obtained from the Case Management System which is used to record all information that fee earners (solicitors and senior legal officers) work on. Within this system time spent on any individual matter is also recorded.

- 3.8 What can be seen is that in all teams the number of cases being opened per year is increasing as are the number of chargeable hours done by each team as a whole. The data for 20/21 is affected by COVID although all teams continued to work during this period the pandemic did have an impact on the way we worked.
- 3.9 One of the most significant things that the graphs show is the increased number of chargeable hours particularly in the Community Team. While there has been an increase in the number of fee earners in this team which would account for some of the rise the number of cases hasn't risen at a similar rate. This is an illustration of the increase in the complexity of the cases.
- 3.10 An Excel spreadsheet is also maintained within Legal Services to record external legal spend monitoring the need to use external resources and tying this back to the case management system. **Appendix 3** contains a table and graph detailing the spend on external legal spend by each of the legal teams.
- 3.11 The information in **Appendix 3** shows that the majority of the external expenditure is on cases relating to the Community Team and in particular Children's Services. Some further analysis is kept of these cases so a better understanding can be had of the reasons for a case needing to incur these costs. **Appendix 3** also shows an explanation of where the money is being spent.
- 3.12 Over time the amount of money being spent is decreasing to external solicitors but there is an increase in the amount being spent on Counsel. At present only 3 cases are outsourced to external solicitors to run on behalf of Local Authority from the time the cases were issued until their conclusion. Such casework is currently outsourced under the National Procurement Services Framework. Fees under this arrangement are prescribed. A competitive tendering process is currently being planned to outsource child and adult protection work when necessary. It's anticipated that this process will take between 3 to 6 months.

#### 4. Members Services and Democratic Services Budget

- 4.1 The Members Services Budget is £1,837,950 and supports Member Remuneration, webcasting, Modern.gov and the primary support costs for Elected Members i.e., member correspondence.

<b>Member Services Budget 2021-2022</b>	
<b>Expenditure</b>	1,837,950
<b>Less Internal Income &amp;Recharges</b>	0
<b>Income</b>	0
<b>Net Expenditure</b>	<b>1,837,950</b>

- 4.2 The Democratic Services Budget is formed from what was previously the Committee & Member Services and Scrutiny Budgets. This budget covers the staffing costs and support for committee and scrutiny. These budgets were merged in 2019 to minimise the management arrangements for the budget. There are several cost codes linked to these budgets which can be used to fully identify budget expenditure.

<b>Democratic Services Budget 2021 - 22</b>		<b>Notes</b>
<b>Employee</b>	785,840	
<b>Premises</b>	61,400	
<b>Transport</b>	1,600	
<b>Supplies &amp; Services</b>	32,110	
<b>Internal Income</b>	0	
<b>External Income</b>	-28,000	Scrutiny of the HRA
<b>Contribution from Reserves</b>	0	Provisionally planned for £5k to be allocated to replenish the reserves
<b>Total</b>	<b>852,950</b>	

### 5. Analysis of GLS Budget 2018/19 to Present

- 5.1 An historic challenge for legal has been ensuring that the work of the team was not unnecessarily inflated by demands of the directorates. To help address this problem, in 2018/19 some directorates were asked to review the increased level of work they were requiring from legal services and if they were unable to reduce the level of work then they would agree to pay more for legal services from their existing budgets. Whilst there was a simple relationship between the contribution and specific posts the reality was that the costs represented a collective charge from legal in order to ensure business requirements were met on time. There was also a review of work done in respect to capital receipts to ensure the time spent was commensurate to the income received.
- 5.2 Whilst there have been annual increases for pressures such as pay awards the specific increases over the least four years have either related to External Legal Fees or Members allowances as determined by the Independent Remuneration Panel.
- 5.3 Since then, the total budget has increased by 12% and the detail in respect to individual increases and savings achieved are detailed in **Appendix 4**. Table 4 and Table 5 show a Breakdown of these percentages down to each division of the directorate.

### 6. Budget Challenges and Pressures

There are the following Directorate budget pressures and challenges:

#### 6.1 Legal Services

(i) **Increase in the number of children and adults safeguarding cases referred to us and an increase in the complexity of those cases**

This is a statutory service. Children's Services' workload has increased, and cases being referred to legal require more legal input due to pressures being faced by Children's Services. Whilst court hearings continued throughout the pandemic, albeit remotely, any cases which required face to face assessments e.g., parenting assessments to take place had to be adjourned during lockdown, which gave a backlog of cases to deal with alongside the new referrals.

All cases have strict timescales imposed by the court which provide the framework and timescales within which evidence is to be obtained and filed. Failure to comply is a breach of the court order and applications then need to be made to the Court (on a form known as a C2) for an extension of time in which to file evidence or for hearing dates to be changed. This will often result in an additional Court hearing which generates more work for legal services. Appendix 5 contains a summary of four anonymised complex cases. The costs external legal fees incurred in each case are also included.

### **(ii) Costs/Shortage of Counsel**

Counsel need to be instructed to carry out specialist advocacy in relation to the longer more complex children's cases, particularly those in the High Court. In reality there is limited opportunity to negotiate the costs of counsel down as there is a shortage of counsel working in this specialism, so it is really difficult to find anyone to instruct attend hearings on occasion.

### **(iii) Recruitment of Social Workers**

It is well known what challenges and difficulties Children Services face (nationally and locally) in respect of increase in the demand of work, increase in the complexities of cases and lack of experienced social workers available. While the Council has many very good social workers, problems recruiting social workers and in particular experienced social workers, leads to reliance on agency social workers which increases the workload for legal services as lawyers are often the point of continuity on a case. There is a recognition by Children Services that these issues have a direct impact upon work Legal Services provides. The challenges and difficulties faced by Children Services increase the work of the Legal Services department, which includes: -

- a. Having to liaise more urgently and more frequently with the client department for the purposes of obtaining instructions to present the case before the Court.
- b. Increased supervision of social workers particularly those who lack experience in court proceedings or require it due to the complexities of a case.
- c. Redrafting documents to improve standard of written work presented to the Court



- d. Liaising more frequently with the client department to obtain the necessary paperwork to support cases
- e. Holding urgent and unexpected meetings with clients to address the deficits identified as a result of the challenges and difficulties faced by the client department
- f. Liaising urgently with the client department in respect of social worker allocation particularly where a case has been issued before the Court.
- g. Drafting a Court application, which is a Court requirement, as a result of late evidence, as result of the challenges and difficulties of the client department
- h. Liaising with potential experts to undertake assessments, as children services commissioning team is not able to do so and cause delays thereby impacting upon existing court timetables

Children Services and Legal Services continue to have ongoing discussions regarding these challenges including regular meetings with the respective OM lead officers. A Court Improvement plan is underway which seeks to implement a number of strategies with a clear plan to address the challenges and difficulties faced. In the meantime, increased demand and complexity within a backdrop of decreasing availability of experienced social workers will continue to have an impact on legal services and therefore resources and budget. **Appendix 6** contains details of four anonymised complex cases. The external legal fees incurred in each case are also included.

#### **(iv) Changes to Ethical Standards Framework**

The Welsh Government has recently carried out and published the results of its review of the ethical standards framework. It is recommending that legislative changes be made so that in future all complaints in relation to alleged breaches of the member Code of Conduct be dealt with initially by the Monitoring Officer of the relevant Council. At the moment the Monitoring Officer only deals with low level member on member complaints. If this recommendation is implemented, then the implications including resource will need to be considered carefully.

#### **(v) Mandatory Transfer of part of Local Land Charges Function to the Land Registry leading to a loss of income**

Legislation requires part of local land charges function to transfer to the Land Registry. The target date is April 2022. The full effect of this is unknown, but the current proposal is the LLC1 Part of the search is to be

carried out by the Land Registry and a fee will be payable to the Land Registry, which will mean legal services will no longer receive that income, so will lose an estimated £15,084 each year. However, the CON29 part of the search remains with the authority and is chargeable so there will still be some income and a need for staff to process those. The effect on staff work may be negligible since the land registry will not be responsible for the data registered on the land charges register and therefore the Council will still need to coordinate sending the registration of new land charges such as planning or highway agreements to the Land Registry and deal with any resulting requests from solicitors or their clients for copies of agreements, clarification of what is meant and whether obligations under those agreements have been met. However, the impact on total land charges income will continue to be monitored very carefully post the mandatory transfer in order to promptly react to any deviations from the assumptions the service has made.

### 6.2 **Democratic Services**

#### **(i) Digitalisation of Democratic Services**

The need to digitise democratic services and support improvements in democracy has been a key priority for the Service and applications were made to the Welsh Government Digital Democracy Fund which supported applications for those purposes:

- Zoom software for Democratic Services to facilitate dual language meetings. (£5,000)
- Hybrid Meeting Equipment upgrade to improve and enhance the accessibility for future Council meetings. (£35,000)
- Cyber Security E-Learning Modules for 3 years (£3,000)
- Democratic Awareness Communications videos to inform the residents of Cardiff of the role of the Council, its Councillors and their Election process. (£35,000)

Cardiff Council was awarded £35,000 for its hybrid meeting equipment upgrade and £5,000 for the procurement of Zoom software. The Cyber Security E-Learning bid was accepted by the Welsh Government who determined that this module would be funded and provided to all Local Authorities in Wales based on Cardiff Council's recommendation. The Head of ICT has been liaising with the Welsh Government to progress the provision of this E-Learning Module. The Democratic Awareness

Communications videos bid was accepted and £50,000 was offered by the Welsh Government for Cardiff and Carmarthenshire Council to work in partnership with the WLGA to provide a series of awareness videos which would be available on an all-Wales basis.

**(ii) Procurement of Conferencing System to allow Hybrid Meetings to Take Place in accordance with legislation**

This procurement is currently ongoing, and the costs are being met from the Capital Programme as agreed in the 2021/22 Capital Budget.

**(iii) IT kit issued to members becoming outdated/obsolete**

In partnership with IT, we have estimated that there will be a need for approximately £170k in order to meet the costs of new IT equipment and mobile telephones during 2022/23. Whilst some will be found from an earmarked Reserve, the source of the remaining funding will be determined as part of the 2022/23 Budget to be approved in March 2022. To reflect the rapid improvements and changes in mobile telephone and IT equipment, we have also indicated a need for additional funding of £20k in 2025/26.

**(iv) Increase in number of elected members**

The recent boundary review, has resulted in the number of elected members increasing from 75 to 79 which will put pressure on budgets relating to elected members such as members allowances, IT supplies, training etc.

➤ **Remuneration**

The Independent Remuneration Panel for Wales (IRPW) has identified an increase in the level of remuneration for all Elected Members in the 2022-23 financial year. The increase is likely to be in the region of £226,000 and will be considered as part of the 2022/23 budget process. Previous increases have been provided for in full as part of the budget for that particular financial year.

The draft IRPW report identifies the potential for Assistants to the Executive to be appointed on a case-by-case basis. The financial implications including the funding source would need to be considered at the same time of the decision.

➤ **Supporting additional Councillors**

Some additional funding relating to the increase in the number of members may be needed to offset costs of Member correspondence, postages, centralised printing & Stationary. This will be considered by the Democratic Services Committee on 29<sup>th</sup> November 2021

- Elected Member personal safety and security  
The Authority has procured the services of “Peoplesafe” to provide an app which enables mobile telephones to act as a lone working device and a funding source has been identified from outside of the service budget.

## **7. Budget 2022/23**

- 7.1 I note the request from the Committee to state what we will need to request for next year’s budget round to cover the directorate as a whole. As part of the 2022/23 Budget Strategy, the budgetary position of the current year will continue to inform the Budget setting process in order to ensure that sustainable budgets for each directorate are set. I have provided the Finance team with the additional requirements in respect to member’s allowances and refresh of IT equipment and mobile telephony. All directorates have been asked to consider where efficiencies can be made from their budgets, however, I have been unable to identify any efficiency savings. In terms of legal services Client departments are needing more not less support from legal services, and legal services are doing more with less. It is worth noting that the risks to the Council of not obtaining accurate and timely legal advice are potentially significant and are reflected in our risk register. I have suggested consideration is given to moving legal services to a trading account basis, so legal services would have no budget but would recharge it’s time to client departments.

I am unable to identify savings without agreement being reached on which areas/types of work we will stop doing. This is very difficult if not impossible to achieve, because the work of the directorate is either statutory relating to safeguarding or local authority decision making requirements or meeting statutory duties such as dealing with education admission appeals, formal decision-making meetings such as Planning Committee and Licensing Committee or related to political priorities such as redevelopment and the provision of social housing.

Section 5 of the Local Government and Housing Act 1989 provides it is the duty of the Council to provide the Monitoring Officer with such resources as in her opinion are sufficient to allow the duties of the post to be performed. It would not be possible to make other savings in the Directorate and still perform the duties of the Monitoring Officer post effectively.

- 7.2 Legal Services is a demand led service, and much of its work is statutory. It is primarily the statutory children safeguarding work which leads to overspends in the external fees budget. The cost of one complex individual case can be in excess of £150k and it is almost impossible to forecast the likely number of cases for next year, so it is very difficult to project how much is necessary. Based on the expenditure in 21/22, the projection could be that an additional £100-200k for external legal fees may be needed, and £7k to cover the costs of the law library and case management system.

**DAVINA FIORE**

**DIRECTOR OF GOVERNANCE AND LEGAL SERVICES**

**8<sup>TH</sup> NOVEMBER 2021**