

Draft Specification

Development of Shared Services Agreement

The existing Administrative Collaboration Agreement (SSA) between CBC and SRBC was signed in December 2008 and is nearly a decade old. It has not been updated to reflect any shared learning or changes that have taken place in that period. There are 2 trigger events which have necessitated a review of the documents

- the proposed extension to the Shared Services arrangement and
- the recent employment difficulties with a shared post.

Issues

1. The SSA is specific to Shared Financial (including Procurement) and Shared Assurance Services. It does include provision for variation of the terms but this is not suitable for extensions to the shared service. There is no process for adding additional services.
2. It has become apparent that the agreement does not adequately address (or at all) the liability for the management of staff working for one council but working at the others offices. In practice, the “managing authority” may not be the employer. However, the employer would still be responsible to the employee for any issues arising as a result of the managing authority’s conduct. In this situation the indemnity in the agreement may not apply as there is no specific agreement leaving the parties to rely on implied duties and goodwill in a continued joint working environment.

Options – form of document

1. Many of the clauses are still applicable and relevant it is simply that the agreement does not deal with issues that have arisen nor does it provide a process for the extension of the shared service.
2. Amend the current agreement through a supplemental document.
 - a. Pro – keeps at its core a document the councils are familiar with and is arguably a simpler piece of drafting as it will only need to cover the additional areas.
 - b. Cons – will mean cross referencing documents which adds to complication.
3. Have a new Collaboration Agreement drafted to replace entirely the current agreement.
 - a. Pro – single document for future governance arrangements, there is an opportunity to revisit the shared services sla’s to ensure they still meet the needs of the councils.
 - b. Con – will still need to incorporate existing arrangements, likely to be more costly and there will be a question over how to end existing agreement (can be done as clause in new agreement).

Recommendation

1. There does not appear to be confidence in either council in the operation of the existing document a new agreement gives an opportunity to recast the existing and ensure it meets the needs for the agreed changes and will include a process for further extensions. Whilst it may be of higher cost it is better to have a single document governing the whole relationship.

Options – drafting

1. There are 2 options for drafting either the supplemental or new agreement
 - In house delivery by council's legal teams.
 - Joint instruction of specialist firm to draft.
2. It has to be recognised that this is a specialist area of law and whilst the legal teams would be competent to draft the agreement, the experience of an external adviser would be valuable. It is acknowledged there is a cost to this but the benefits outweigh this,

Recommendation

1. Joint instruction of specialist firm (eg Addleshaw Goddard, Brabners, Gateleys Hill Dickinson)

Proposal

1. Council's legal officers agree specialist firm.
2. Letter of instruction is prepared to
 - Re-establish existing arrangements
 - Incorporate new roles into shared service
 - Provide a process for the Councils to agree to extend the shared service further, to include governance structure, definition of roles, decision making/ authority and operational implementation.
 - Define and fix the liabilities of the Council's to each other in relation to employment disputes concerning employees working within the shared service or pursuant to the shared service.