

Agenda Item No. 6

Title:	Local Government Re-organisation – Judicial Review
Portfolio Holders:	Cllr Graham Payne, Leader Cllr Rod Eaton, Change and Integration Portfolio Holder
Reporting Officer:	Nicola Mathiason - Head of Legal and Democratic Services Andrew Pate - Chief Executive
Key Decision:	No

Purpose

- To decide whether to redirect the Council's legal efforts and resources, from a separate judicial review, to support for the Shrewsbury and Atcham and Congleton appeal.

Background

- On 8 August 2007 Cabinet agreed that the Council should commence legal proceedings for Judicial Review against the Secretary of State's decision about Local Government Reorganisation in Wiltshire.

The Council's case has been 'on hold' until the result of the Shrewsbury and Congleton Judicial Review was known. The judgement in this case has now been delivered. The judicial review was unsuccessful.

The High Court Judge held that the Secretary of State had common law powers available to her to carry out the process, that she did not have to be satisfied that a proposal met the criteria at the time of the assessment and that she had not acted irrationally.

Key Issues

- Advice has been taken from our Counsel (who also acts for Shrewsbury and Congleton) on whether we should now continue with our case in the light of the Shrewsbury judgement. We have been advised that unless the Shrewsbury judgement is appealed successfully we cannot effectively progress our case. The grounds of our case are similar and the arguments we would raise are much the same as Shrewsbury raised. We have been advised that we should focus on supporting an appeal by Shrewsbury and Congleton. We should however keep our case on hold.

Risk Management implications

- Counsel has stated that the chances of an appeal being successful are good. A Court of Appeal hearing may not be scheduled until the New Year with a decision likely in early spring. By that time the Bill will most likely have become an Act and the Implementation Orders will have been passed. This may affect the impact of the appeal but does not, in the view of Counsel, mean that the appeal cannot delay or even halt the existing process.
- If the Court of Appeal decides that the Secretary of State did not have the powers then the whole process may have to be repeated. If the Court of Appeal decides that she had not applied the criteria correctly or that the consultation was unfair, she may need to repeat the consultation process or carry out a reassessment of all the bids. Counsel has advised that we would probably not need to take our case any further as the Secretary of State would need to rethink all the unitary decisions. This would cause a delay. If the delay was long enough the Secretary of State may drop the proposals, particularly if the timing brought the process close to any General Election.
- There is a risk however that the Court of Appeal could decide that although the Secretary of State did not have the powers to do what she has done to date, as she would then have the powers as the Act had been passed, there would be little point in directing her to carry out the whole process again.

Effect on Strategy and Codes

- If a unitary authority is created this Council's Corporate Plan and its priorities and strategies will no longer exist. The new unitary will most likely have different priorities and plans. The extent of the difficulties cannot be accurately predicted at this stage.

Finance and Performance Implications

- The Council has already made a decision to bring its own case. The principle of taking our own case forward and spending the money to do so was agreed at Full Council and Cabinet. Advice was given to Council on 8 August that the costs of doing this were likely to be in the region of £5000 to issue proceedings and £15000 to £30000 to proceed further.
- We have now received advice not to proceed further with our case at this stage. This means that we do not need to spend further money on our case at present. Counsel has advised that we should now focus our attention on supporting an appeal.
- Shrewsbury and Congleton Councils have spent a considerable amount bringing their case to this stage. They have estimated that the likely cost of an appeal would be £100,000, plus £50,000 for the Secretary of State's costs if the appeal was lost. They have now requested financial contributions in the region of £30,000 per council to help towards these costs. They have suggested that councils offering contributions enter into

an agreement to formalise this arrangement. An indemnity will be sought in the agreement to ensure that Councils are only liable for the contributions they offer. If the costs are less than anticipated refunds will be made. If the appeal is successful and the Secretary of State is ordered to pay the costs of the appeal then the contributions made by each Council will be refunded. A number of councils including Salisbury and Kennet have come forward and made promises of financial contributions.

- It is suggested that if Cabinet wishes to support the appeal it offers to make a financial contribution of up to a limit of £30,000 to help meet these costs. This would be instead of continuing to pursue our own case at present, which would be kept on hold. If there was a need to spend further money e.g. costs rose higher than anticipated; if there was a need to take the case a stage further to the House of Lords or we needed to consider whether to re-activate our own case, legal advice would be obtained and the final decision would be taken through full Council.

Legal and Human Rights Implications

- Under section 2 of the Local Government Act 2000, the Council has power to do anything which it considers likely to achieve the promotion or improvement of the economic or social or environmental well-being of the area for the benefit of the area or the inhabitants of the area. In addition there is also a power under section 111 of the Local Government Act 1972 which allows a local authority to incur expenditure which is incidental to the discharge of its functions.

Options

- Cabinet could refer the matter to full Council on 21st November for Council to express a view and subject to support being given by Council at that meeting then to make a final decision

Next Steps

- That the Cabinet's decision is communicated to Shrewsbury and Congleton Borough Councils. They are now leading the appeal and will make a final decision as to whether to progress the appeal by the end of November, once they have had notice of financial contributions from other councils.

Recommendations

The Cabinet is recommended to:

- Agree that the Council's own judicial review proceedings be put on hold and a financial contribution of up to a maximum of £30,000 be made towards the costs of an appeal by Shrewsbury and Congleton against the High Court judgement
- Agree that if necessary an appropriate agreement to make the contribution is entered into with Shrewsbury and Congleton Borough Councils and delegated authority be given to the Head of Legal and Democratic Services, in consultation with the Portfolio Holder for Change and Integration, to conclude such an agreement

Background Papers

- The High Court Approved Judgement
- Reports to Council and Cabinet on 8th August 2007 - the Implications of the Secretary of State's decision - Local Government Reorganisation in Wiltshire