

Appendix 1

Joint Legal Team

Heads of Terms - New Shared Service Agreement - subject to contract

Draft dated: 1 November 2021

Version 3 : 181122

Proposed Start Date: 01 April 2023

Context - these Heads of Terms signifies the main objectives of the partners in the Joint Legal Team. It is not a legal document. It is prepared to cover the main points to be later included in a shared service agreement. It is expected that the final document will include standard clauses to deal with such matters as:

- Indemnity and insurance
- Assignment and sub-contracting
- Intellectual property
- Duty to co-operate with any complaint
- Disagreement and disputes
- Public body/local government statutory requirements such as FOI Etc

Strategic Intent

- 1) The six councils in Berkshire intend to operate a shared service for the provision of a specialist adult and children's social care and education legal service ('the JLT'). The JLT is hosted and managed by Reading BC for the mutual benefit of all councils in Berkshire. The current take up of services is shown at Appendix 1 as not all councils take all of the services.
- 2) The councils intend to pool resource in the team to ensure that overall the legal services are delivered through the peaks and troughs that a single council might encounter.
- 3) The councils intend to share in the skills and experience accumulated in the JLT for the better performance of their social care functions.
- 4) Reading BC is the host council of the JLT and is also a customer of the JLT as the costs of the legal services used by Brighter Futures for Children are defrayed by the Reading BC alongside its own Adult cases. Reading BC will run the JLT for itself and the other councils under a contract for shared services taking into account the Best Value duty of economy, efficiency and effectiveness.
- 5) The most efficient, effective and economical use of resources in the JLT allows the six councils to deploy resources in circumstances when and where they are most needed in adult and children's social care and education. JLT is a key partner in the delivery of best value in these functions. All parties will work to a preventative presumption that keeping cases out of litigation is better for families and this is the underlying ethos of JLT.

Objectives

- 6) The objectives of the JLT are as follows:
 - a) To support the social care and education teams in Berkshire so that they can deliver an excellent service to their clients.

- b) To provide a centre of excellence for social care and education legal work which is recognised by the councils, the Courts and other stakeholders across Berkshire and nationally.
- c) To provide a quality legal service making the best use of people, information and technology and which meets the needs of the councils and the partners with whom they work.
- d) To provide a value for money service with a focus on continuous improvement in the efficiency of the team and transparency of costs.
- e) To be accountable for its work and provide the necessary information to allow the councils to track their expenditure and manage their operations effectively.
- f) To monitor the complex and high cost cases to ensure these are delivered efficiently, effectively and economically.
- g) To provide value added services such as general advice and training which allow all councils to take advantage of the expertise of the JLT.
- h) To participate in the improvement of social care and education services generally in Berkshire in accordance with the preventative presumption.

The Service

- 7) The work of the shared service is as shown below and in Appendix 1 for the individual Councils (for illustration):
 - a) To provide legal advice and support in respect of all Childcare legal matters
 - b) To provide legal advice and support in respect of all Adoption matters
 - c) To provide legal advice and support in respect of Adult Social Care matters to those councils who wish to buy this service
 - d) To provide legal advice and support in respect of Education matters to those councils who wish to buy this service
 - e) To provide legal advice and support in respect of third-party police disclosure matters
 - f) To provide legal advice and support in respect of any other matters that comes under the remit of children, adult and education services as requested by the councils
 - g) To proactively engage with the councils to ensure that the learning & advice provided by the JLT is available to assist with service improvement and development in the wider Berkshire social care and education functions.

The full specification of services delivered by the JLT will be set out in full in shared services agreement. The specification will list the exact services provided to each Council.

The Parties to the Agreement

- 8) All six councils in Berkshire will ensure that their respective companies responsible for service delivery of different social care or education functions are aware of the agreement. All councils to ensure that their respective company / trust partners are fully sighted on this Heads of Terms.

Representatives

- 9) Each Council will nominate a representative for the purposes of negotiating this Agreement. The role of the representative is to consult 360 degrees in their own organisation (any associated company or trust) to ensure that all relevant issues

which pertain to the JLT have been brought into this Heads of Terms negotiation and agreed with the other partners.

Organisation	Representative
Bracknell Forest Council	Manjit Hogston
Reading BC (including Brighter Futures for Children)	Deborah Glassbrook
Royal Borough of Windsor and Maidenhead (including AFC and Optalis)	Kevin McDaniel
Slough BC (including Slough Children's Services Trust)	Carol Douch
West Berkshire Council	Pete Campbell
Wokingham BC (including Optalis)	Viki Elliot-King

- 10) For JLT - Michael Graham, Assistant Director of Legal and Democratic Services, Reading BC.

Assumptions underpinning this Agreement

- 11) There is a partnership approach to this Agreement which means that Reading BC as the host council will engage with all councils through various pathways. This includes:
 - a) the JLT Joint Agreement Board (JJAB) consisting of named representatives from each Council to overview the operation of this shared service to ensure all partners are consulted on significant new developments and have the opportunity to hold the JLT accountable for the operation of the Agreement;
 - b) the commissioning/contract manager in respect to the deliver of services and performance indicators under this agreement; and
 - c) The finance departments in respect to budgets, fees and payments and accounting for this. .
- 12) JLT is a mature team having existed for over 20 years. The stability of the team means that in the ordinary course of events, investment from the councils is not expected nor are guarantees to underwrite the JLT costs appropriate. In exceptional circumstances where service redesign with financial consequences is considered necessary this will require prior agreement of each Council impacted under recommendation from the JJAB.
- 13) The Agreement will make provision for exceptional circumstances whereby the parties seek to dissolve the Agreement and provide the legal service for themselves, via a third party provider or in partnership with another organisation. In these instances, it is reasonable to expect that as a mutual service all councils would pick up their share of one off project/transition costs to leave the Reading BC in a neutral position.
- 14) Where one party seeks to leave the agreement, it is expected that they will be responsible for meeting any one off costs.
- 15) Where Reading BC seeks to make exceptional changes requiring investment in the team or redundancies, it will consult with the Councils via the JJAB to inform them if there is any risk to the relevant clauses in this Agreement being invoked. Reading

BC will only proceed with the change when the consent of all those Council's impacted by the change has been received. In the absence of consent then Reading BC bear the costs.

- 16) In the ordinary course of events, Reading BC will work within this Agreement to manage service volumes, the quality of the service, achievement of stated objectives and the management of costs. The Agreement will be reviewed annually at the JJAB to see if any changes are required.

Status of this Agreement

- 17) This Agreement supersedes all others (*to be listed for completeness*):
- a) Previous Joint Agreement
 - b) [Relevant parts of the] Reading SLA with Brighter Futures for Children
 - c) RBW&M Agreement
 - d) SLA with Slough Children's Services Trust

The term of this Agreement shall be 5 years from the 01 April 2023 date of completion of the Agreement.

Accountability

- 18) Reading BC will ensure that a relevant council will have complete visibility of their cases, progress, costs and disbursements on a monthly basis and (in anonymised/general terms) the same detail for all parties receiving services from Reading BC. Reading BC will develop a range of reports with the parties to provide the necessary performance data to allow for tracking the key performance indicators for the operation of the Service and financial information. These will be sent in week one of each month.
- 19) The JJAB will agree a mechanism upon recommendation from Reading BC for the projection of financial commitments for cases and disbursements. To be monitored through the JJAB.
- 20) The JJAB will develop an approach to the project management of high cost cases which will allow for detailed analysis of projected costs and disbursements upon recommendation from Reading BC.
- 21) The sufficiency of performance data will be agreed by all parties as part of the JJAB and reviewed on an annual basis. Where changes are required the reports will be updated for all parties. All parties to agree the performance data requirements of the Service together via the JJAB.
- 22) Where any party has a particular need for a bespoke report for any particular function, then this can be provided by JLT, but this may be a charged for service payable by the Council requesting the change if it requires support from the software supplier to implement.

Service volumes

- 23) The parties will work together to allow for the reasonable mutual planning of caseload. This includes the attendance of council/company/trust personnel with JLT staff to meet at monthly client liaison meetings.
- 24) The JLT is a demand led service and does not turn work away. To manage the workload the JLT will work with the partners through the tracking route and regular meetings, no less than monthly, between the JLT Team Leader and a nominated person from the client authority to:
 - a) Review caseloads
 - b) Review decision making for cases (where necessary)
 - c) Set realistic deadlines
 - d) Mutually agree the priority of matters according to urgency
 - e) Identify opportunities for all parties to work in accordance with the preventative presumption
 - f) Mutually agree any external spend on disbursements prior to expenditure including but not limited to counsel, independent experts and independent social workers

Partner responsibilities

- 25) The nature of JLT's reactive and demand led service means that partners are incentivised to help JLT reduce demand. This means, working with the PLO in the pre-proceedings team as effectively as possible, accepting standardised processes and ways of working, passing instructions in accordance with best practice. The partners and JLT need to work together to reduce demand and identify the least interventionist process that meets the needs of the vulnerable child or adult and always in accordance with the preventative presumption mentioned at paragraph 5 above

- 26) The responsibilities of partners will be itemised in Service Level Agreements which will be negotiated with JJAB to ensure that all partners can work as efficiently and effectively as possible and make the best use of resources.
- 27) Performance measures - will be agreed in the shared service agreement and modified by agreement of the JJAB. Performance measures and regularly reported, monitored and acted upon. All bespoke reporting required of the JLT which hasn't been agreed by the JJAB, may incur a cost to the Council requesting the report.

Current costs - hourly rates

- 28) In advance of each financial year there will be a Budget Setting process. The JLT will produce a draft Budget based upon previous use. This budget will be received by the JJAB to approve. It will be up to each council to ensure that their individual approvals for the budget are made and that the JJAB representative can agree the Budget. Changes requested as part of the Budget setting process will be considered to be a variation to the agreement and the costs associated will be borne by the Council(s) requesting the change.
- 29) At the End of each Financial Year there will be calculation of actual costs incurred. The method of calculation will be agreed by the JJAB but will be based upon the actual utilisation of the services (ordinarily using number of hours as measure of activity). Disbursements will be the sole cost of the Council incurring the cost.
- 30) At present, and for the immediate future, costs are apportioned on the basis of an hourly utilisation. The initial estimate hourly rate is based to ensure that the work can be charged on the matter according to the resource which is required to deal with it. The hourly rates system allows for the fair distribution of additional overheads as part of lawyers' time. In this way, all councils will contribute to the Service overheads according to the basis that they are used.
- 31) The hourly rate will be built up from direct staffing costs, direct costs and overhead costs. No VAT is charged between councils on these supplies.
- 32) Overhead costs includes all associated apportioned costs typical for any council service such as staffing costs (such as pensions, insurance and oncosts), management costs (to Assistant Director level), support services (HR, procurement, and finance) and property costs but includes costs associated to the management of a legal service including registration fees, insurance, legal software and library resources.
- 33) To allow for peaks and troughs in work and the possibility that the JLT may under or over recover, the Service will aim to break even over a rolling three-year period.
- 34) Hourly rates will be charged on a graduated basis to encourage work to be undertaken at the most appropriate and cost-effective level to be agreed between Reading BC and the relevant council. These levels will be:
 - a) Unqualified or administrative staff
 - b) Trainees or paralegals
 - c) Newly qualified lawyers
 - d) Senior lawyers
 - e) Principal lawyers or Team Leaders
 - f) Dept Heads
 - g) Assistant Director
- 35) Overheads from a proportion of administrative staff time and managerial time will be built into the hourly rates. These proportions will be reviewed annually to ensure there is no element of double counting of time that is overhead and time which is directly charged.

- 36) Reading BC will issue invoices monthly after reports have been sent to allow for necessary enquiries to be made on cases and time spent etc.

Disbursements

- 37) Reading BC does not manage client funds on their behalf. Reading BC will incur a range of disbursements on matters which the parties will reimburse within 28 days of receiving an invoice from the Council. Invoices to recover disbursements will be issued monthly.
- 38) Disbursements are charged by the third parties to Reading BC and Reading BC will recover the VAT. Disbursement invoices issued [Mention how VAT treated on this]
- 39) Host council to procure the following according to principles of Best Value and Social Value:
- a) Experts (note that these have mainly Court stipulated rates)
 - b) Independent social workers - query if this is a JLT function - we think it should be with the client authority.
 - c) Counsel
- 40) The host council may enter into a Dynamic Purchasing System or Framework Agreement on behalf of the councils/ companies/trust. The cost of doing so is a proper overhead on JLT as it will produce longer-run savings for all partners.

Costs & Forecasting

- 41) In week 1 of each month the Reading BC will run a report for the parties which shows their legal costs against each case for the proceeding period. The report is not an invoice. In addition, headline reports for spend for entire service across all councils. Both instances, spend for cases and service level should be forecasted.
- 42) The purpose of the report is to allow for prompt enquiry and scrutiny of costs and enable each council to manage overspend and in year changes to costs. It is expected that all parties will endeavour to raise queries on cases promptly and definitely before the next reporting cycle.
- 43) JLT will meet with each client in week 2 of the month to review cases and to pick up any queries, relating to costs and disbursements etc.
- 44) JLT will issue invoices in week 3 of the month to each client department in
- 45) The final outturn for the preceding financial year will be delivered to JJAB by end May in each year.

High Costs cases

- 46) Where high cost complex cases arise, JLT will implement a system to agree and control costs which will involve:
 - a) Project management of the matter
 - b) Agreed gateways and costs estimates
 - c) Best use of internal and external lawyers and experts

Future costs

- 47) JLT will seek to move from a position of charging by hourly rates to a system of planned fixed budgets. This will utilise experience from predicting costs on routine matters (para 19 above) and the project management of High Cost cases ().
- 48) This objective will be overseen by JJAB to ensure that all councils agree the assumptions behind the future charging model.

Governance JJAB

- 49) This partnership agreement will be monitored through JJAB. Each party to nominate at least one officer to attend JJAB and to ensure attendance by a deputy or alternate if the first choice is not available. The JJAB will agree the number of officer representative from each Council.
- 50) The objectives of JJAB are to monitor the achievement of JLT objectives under this Agreement and to agree a yearly Service Development Plan (SDP) which outlines further detailed service standards, objectives and milestones for the JLT.
- 51) The Terms of Reference of JJAB will be agreed by consensus by JJAB and kept under review to ensure flexibility. The ToR can only be amended with the consent of all the parties.
- 52) The Terms of Reference includes
 - a) membership,
 - b) representation
 - c) roles and responsibilities
 - d) meeting frequency
 - e) preparation and agreement of the SDP
 - f) , performance measures and reporting.
 - g) Disputes resolution role ?
 - h) Budget setting & service recommendations
 - i) Contract & performance management & review

- 53) The intention is for JJAB to have the ability to ask for more information and meetings when required, but to reduce contact where things are working as anticipated.
- 54) Reading BC will prepare the Service Development Plan for JJAB to agree. Reading BC will service the JJAB and provide a range of management information as envisaged by the SDP.
- 55) Nothing in the SDP can require Reading BC to incur expenditure which is not agreed in the Council's JLT budget.

Change control

- 56) Where a party wishes to add to the services it is seeking from JLT the party concerned and the host council will agree terms in line with the Joint Agreement providing that such change does not impact on the service provided to the other parties. JJAB will be consulted and will be entitled to satisfy itself that this will have no adverse effect on the delivery of services to other parties.
- 57) Where a party wishes to alter the service it receives from JLT, removing part of a service but not removing all of the services, then that party should give at least 12 months' notice. JJAB shall be consulted in advance of the notice being given to satisfy itself that there will be no adverse effect on the delivery of services to the other parties. Where the host Council and JJAB agree that a shorter notice period will have no negative effect on service a shorter notice period may be negotiated.

Termination clauses

- 58) To exit the shared service agreement (i.e. removing all of the services from JLT) a party must give at least 12 months' notice.
- 59) Where JLT consistently defaults on the service standards as set out in the SDP, and the matter has been referred to JJAB for resolution, and there has been no improvement from JLT then the aggrieved party may give two months' notice to expire at any time to exit the shared service agreement.
- 60) The costs of exit in terms of staff redundancy and other direct costs are to be paid by the exiting Council to Reading BC. Where these costs are not agreed the matter shall be referred to the JJAB for mediation. Where there remains disagreement, this is to be resolved by the Berkshire Chief Executives.
- 61) In either case, there will be an Exit plan agreed by the exiting party and the host council to cover matters such as handover of cases, TUPE, etc. All parties will endeavour to redeploy staff so as to ensure exposure to redundancy is eliminated where possible or otherwise limited.

October 2020 - Services Provided by JLT

Council	Pre-Proceed.	Care	Adoption	Police Disclosure	Adults	Education
Bracknell Forest	✓	✓	✓	✓		
Reading BC					✓	✓
• BfFC	✓	✓	✓	✓		✓
Slough						
• SCST	✓	✓	✓	✓		✓
Windsor and Maidenhead						
• AFC	✓	✓	✓	✓		✓
• Optalis					✓	
West Berks	✓	✓	✓	✓		
Wokingham	✓	✓	✓	✓	✓	✓
• Optalis					✓	

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