

Report Title:	New Shared Service Agreement for the commissioning of Joint Legal Services (JLT)
Contains Confidential or Exempt Information	No – Part I
Cabinet Member:	Councillor Carroll, Cabinet Member for Children’s Services, Health and Mental Health
Meeting and Date:	Cabinet – 24 March 2023
Responsible Officer(s):	Kevin McDaniel, Executive Director of People Services
Wards affected:	All

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REPORT SUMMARY

The Council has been engaged with the Joint Legal Team since its inception in 1998. In recent years, a number of attempts have been made to drive more consistent value from the arrangement for all Berkshire authorities while retaining a local centre of high quality legal advice. This report sets out the pan-Berkshire work to revise and clarify a single, common approach for this service, to be finalised into a new shared service agreement.

In particular the pan-Bershire objectives are to cement the use of local, skilled staff in JLT, which can innovate across the service to maintain good value for money and increase cost predictability over the medium term for all Partners.

*This arrangement supports the vision of **Creating a sustainable borough of opportunity and innovation** by ensuring that the Council is able provide timely, high quality services to support vulnerable children and adults when we are required to engage with the court processes.*

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Cabinet notes the report and:

- i) Agree the attached Heads of Terms form the basis of a new Shared Service Agreement between all the Berkshire local authorities.**
- ii) Delegates authority to the Executive Director of People Services in consultation with the Cabinet Member for Children’s Services, Health and Mental Health, to negotiate the final version of the Shared Service Agreement, to agree and complete the same.**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
<p>Agree the proposed Heads of Terms form the basis of a new Shared Service Agreement and delegate authority to the Executive Director of People Services in consultation with the Cabinet Member for Children’s Services, Health and Mental Health to negotiate the final version of the shared services agreement.</p> <p>This is the recommended option</p>	<p>This option creates a legal arrangement for the provision of essential, expert legal service for our social care teams. The arrangements offer good value for money and clear governance oversight for the Royal Borough.</p>
<p>Re-negotiate a single party relationship with JLT</p> <p>This option is not recommended.</p>	<p>This approach in recent years has proven to be more expensive and led to significant variation in the level of service available to the Royal Borough.</p>
<p>Seek an alternative provider for legal services.</p> <p>This option is not recommended.</p>	<p>Achieving for Children considered alternative arrangements in 2020 and established that commercial services were significantly more expensive. Alternative public sector arrangements were similarly more expensive and also lacked access to the local family court which risked a lower quality of interaction.</p>
<p>Do Nothing</p> <p>This option is not recommended.</p>	<p>This is not an option as the current arrangements are ending so the Council will be without essential legal services for social care services.</p>

Background to JLT

- 1.1. The JLT was established on 1st April 1998 (following the abolition of Berkshire County Council) to provide legal services to the Children’s Social Services Directorates of the six Berkshire Unitary Authorities. The service was originally provided pursuant to a Joint Arrangement between the JLT and the six unitary authorities and hosted by Reading Borough Council, though other arrangements have developed over time (more detail below).

- 1.2. The last version of the shared services agreement dates from 2013 and was also considered in a review of the JLT by the Berkshire Chief Executives in October 2019 (discussed further below).
- 1.3. Today the JLT provides legal services as follows:
- Children’s Services advice including pre-proceedings and adoption to all six Partners and to Adopt Thames Valley. This could also include advice in respect of human rights claims, third party police disclosures; private law matters involving Children Services, Youth Offending issues or anything which is ancillary to the provision of Children’s Services. Occasionally it may advise on Policy work or complaints work.
 - Adult Services and Education – to four of the six Partners – Reading, Slough, Wokingham and Windsor and Maidenhead. This is a growing area with Partners providing new worktypes to the Team e.g. education prosecutions.
 - The JLT also provides advice to all six Partners in the growing area of Judicial Review. This principally concerns unaccompanied minors, asylum seekers and the “child” status of refugees.
 - JLT provides training for all of the Partners.
 - The JLT works closely with the Designated Family Judge in respect of establishing good local practice. The JLT has two representatives sitting on the Local Family Justice Board and participates in sub-groups and meetings convened through this Board.
 - The JLT prides itself on being a demand led service which is responsive to the needs of the Partners. It does not turn work away.
 - The JLT provides an Out of Hours Service that covers evenings, weekends and bank holidays. Therefore, a lawyer from the JLT is available to provide legal advice 24 hours, a day 365 days of the year, to all Partners.
- 1.4. Further detail on the operations of the JLT are provided in the Appendices as follows:

Appendix A – Childcare law, complex and high-cost cases

Appendix B – Adult Social Care and Education (ASCE)

Business model

- 1.5. When the JLT was last reviewed by the Berkshire Chief Executive’s in 2019 it was noted there were a mixture of charging mechanisms which had developed over time. There were those arrangements which were included in the scope of the 2013 Agreement and then those which had developed alongside as some councils had proceeded down a procurement route to purchase their legal services from JLT outside of the 2013 Agreement. Presumably, this was to try and evidence or secure greater VFM. (RBWM for childcare and non-childcare, Wokingham for ASCE, Slough for Education).

These complicated arrangements meant that some councils were charged more per hour than some others for the same work. Any resulting “profit” made by JLT was then used as a way to subsidise the other JLT partners for the work under the 2013 Agreement.

- 1.6. In 2020, the Joint Agreement Board (the Board), set up as a result of the Berkshire Chief Executive’s Review, concluded that this arrangement was not sustainable or desirable. The additional complexity of individual SLAs and contracting arrangements between councils provided no greater benefit for any of the Partners and only served to distract limited JLT management resources away from other more pressing priorities such as the overall improvement of the Service to provide greater transparency and value for money.
- 1.7. In addition, Reading had hosted the JLT on the basis of a 6% on-cost which was applied to the time charged and to the disbursements charged. This 6% figure appears to be a simple mechanism which was agreed by all the unitary authorities for the delivery of shared services on the breakup of Berkshire County Council in 1998. The attraction of a simple mechanism is understandable.
- 1.8. Whilst at the time the 6% may have been a convenient way of calculating overhead costs without complicated re-charges which were always open to challenge and debate, the Joint Agreement Board considered that the 6% flat rate was a powerful disincentive for improvement in the case of JLT, especially when applied to disbursements. The Board agreed as a principle that it would be preferable to have a mechanism which recognised the overheads to Reading BC for hosting the Service and then allowed for those to be examined and discussed as part of an annual budget setting process.

Governance

- 1.9. The 2013 Agreement did not specify the creation of a Board to oversee the Shared Service, but it did stipulate that a biannual meeting should take place between the Heads of Legal and the JLT. These meetings did not take place, and the 2019 review of the JLT by the Berkshire Chief Executives, was keen to reinstate them. From 2020 we have moved to quarterly board meetings which are Chaired by the Wokingham Chief Executive, Susan Parsonage, with a new Terms of Reference agreed. This Board, the Joint Agreement Board, comprises representatives from each Partner authority, usually the DCS but also other colleagues e.g. finance and legal. Each Partner chooses the representatives which are most appropriate for their organisation. Given the growth in legal work from Adult Services, the Board is also seeking a DASS to join the Board to provide input on that area of work.
- 1.10. The Board has been focused on picking up the recommendations following the 2019 Chief Executive review, but has also scrutinised costs and budgets,

considered JLT improvement plans and overseen the development of the Heads of Terms for the new Shared Service Agreement.

- 1.11. It is proposed to continue the present Board arrangements and then review them in due course. The new Heads of Terms document specifies that the Board should meet at least quarterly.
- 1.12. In addition to quarterly Board meetings, there are regular, usually monthly meetings at an operational level between the JLT and their colleagues in Children's and Adult Services. These meetings look at current case issues, track costs and high-cost cases with a focus on problem solving. It is planned to enhance the effectiveness of these operational meetings by improving the scheduled reporting of data from the JLT case management system. These improvements are underway.
- 1.13. Some Governance issues which are currently with the Board, and which Partners ought to be aware:
 - 1.13.1. **Progress on billing.** The 2019 review requested that there be a move to monthly billing. This was to respond to the previous situation where JLT bills were calculated at year end and then set-off amongst other Berkshire Shared Services. This situation was difficult for Partners, as it did not allow for adequate budget monitoring and it often produced unwelcome surprises for authorities which had a spike in cases, particularly if it was a spike in high-cost complex cases. From 2020 JLT has moved to quarterly invoices. The move to monthly invoices is still to be delivered, and has been delayed by a number of internal organisational changes. The personnel and technology will be in place to allow this to happen during 2023.
 - 1.13.2. **Service Development Plan** – an improvement plan for JLT has been developed and is with the Board. This builds on the internal work which has been done in business planning for the JLT and setting targets for staff performance.
 - 1.13.3. **Budget Planning.** The JLT budget is built on estimates of time spent by lawyers in different categories of qualification / specialisation. The original 2013 Agreement envisaged a budget for JLT to be produced in the Autumn which Partners would then agree for the following financial year. This accords with commonly accepted practice for other local government services. As the anticipated biannual meetings fell away, so did the budget planning cycle, which was the detriment of all concerned. We are now moving back to the position where JLT will plan a budget in the Autumn with Partners.
 - 1.13.4. **Business Model.** Over time, the JLT has moved from a planned budget to one which is reactive and charges on a time spent basis (billable hours), with the Partners paying for what they use. There are pros and cons with this method. The Board has considered whether

this is the most effective business model. The Heads of Terms Agreement proposes that we seek to move away from this model as it does not afford certainty to the Partners for what they have to pay in any given year. However, there is also a need for JLT to be responsive to their clients' needs and not to turn work away. Some flexibility is therefore needed in the business model to allow this to happen to make sure that the host authority can recover resources needed to respond to increases in work. The 2019 review noted: *“Whilst it is appropriate to undertake proper budget planning in a timely manner, demand for legal support cannot be accurately predicted 18 months in advance. This reinforces the need to re-establish the regular budget and contract management that was envisaged in the original Agreement. Whilst this will not influence demand it will provide a frequent opportunity to review demand trends and the potential impact on spend”*.

- 1.13.5. **6% administrative fee** – see above, the 2019 recommendations proposed that the 6% fee continue. However, as noted above, this on-cost is a considerable disincentive for improvement. Partners have indicated a willingness to pay a suitable charge for Reading BC's overheads, as part of the Shared Service costs with a view to increased transparency and scrutiny on those costs which make up the fees charged to Partners.
- 1.13.6. **Blended rates** – the 2019 review recommended a continuity of the blended rate (which at that time was £75 per hour reducing to £66 per hour by taking paralegal time out of overhead to charge it directly). In negotiating the new Heads of Terms document the Partners have discussed the desirability of discontinuing the blended rate. JLT intends to move to a variegated rate for different classifications of lawyers. The reason for this is to improve the efficiency of the team, to bring greater focus on who is doing what, and facilitate the delegation of work to the most appropriate level. At present, Partners pay the same for a 20-year qualified lawyer as they do for a paralegal. The JLT is pushing for managers and senior lawyers to be focussed on doing only the work they can do, so that case progression and management of cases gets diverted to the most appropriate level. To facilitate this, case costs should accurately represent the work which has gone into them. The present blended rate does not allow this scrutiny.

1.14. The 2022/23 business model takes into account these issues of the 6% fee and the move to variegated rates.

1.15. The current costs of running the service are as follows:

- Staff time

- Management and supervision time. This is recovered as overhead on the hours charged. It also includes the administrative support. In 22/23 this is £545k
- Other employee costs. Includes training, and temporary staff. In 22/23 this is £238k
- Directly charged time on cases. In 22/23 this is estimated to be £2.8m
- Supplies and Services – ancillary to running the Service, e.g. software licenses, subscriptions to databases, printing, postage etc. In 22/23 this is £223k
- Overheads of support services. HR, Finance, Accommodation, ICT etc. In 22/23 this is £427k

1.16. This means that the Service only charges Partners for the time they use. The direct cost of staff has an apportioned overhead for all of the management and administrative costs, other employee costs, supplies and services and overheads. The staff costs then run from £41.70 for the lowest grade of paralegal to £84.80 for a Team Leader. This is equivalent to a blended rate of approx. £64.51 ph.

Heads of Terms – New Shared Service Agreement

- 1.17. The work of the Partners since the 2019 Chief Executives Review has picked up the themes of greater transparency, better reporting, improved governance. There are service improvement initiatives underway which will be overseen by the Board. All of these improvements are designed to make the JLT more efficient, effective and economical for the Partners.
- 1.18. The opportunity with a new Shared Service Agreement (a recommendation from the 2019 review) was to take a fresh look at the basis on which JLT is provided by Reading and purchased by the Partners.
- 1.19. In 2020 there were a number of contractual arrangements in place which had emerged over time as different councils took a different approach. It meant that the “core” JLT work under the 2013 Agreement was provided at cost and the contracted work, under various other Agreements was provided with a margin.
- 1.20. This was unhelpful in a number of ways:
- The methodology for charging was unduly complicated and the Partners were not sighted on the methodology. The lack of financial information led to suspicions that Reading BC was profiteering at the expense of Partners.
 - Any surplus produced by JLT contracted work was supposedly set-off for the benefit of the Partners who had purchased the “core” JLT work. How this happened was not clear to Partners and was not aided by the lack of transparency mentioned above.
 - Procurement activity and responding to tenders is a time-consuming activity which has to be paid for, so the Partners were effectively paying

twice for this if they went down a procurement route, and that procurement route led to a higher charge per hour than the “core” work which was always focussed on cost recovery alone.

- 1.21. In looking at a new Shared Service Agreement it is proposed to clear away all the previous contractual agreements and to enter into the new Shared Service Agreement on the basis of clear mutual commitments, and reinforcing that JLT is a shared service not a contracted service.
- 1.22. The Partners intend to pool resource in JLT to ensure that overall the legal services they need are delivered through the peaks and troughs that a single council might encounter.
- 1.23. The Partners intend to share in the skills and experience accumulated in the service for the better performance of their social care functions. JLT has become a recognised centre of excellence and there is value in sustaining that knowledge and experience for the future benefit of the Partners. Reading, JLT and the Partners all have a mutual interest in promoting even greater operational excellence so they can be assured of the efficiency of the Service and see demonstrable cost reductions.
- 1.24. Reading BC is the host council of the shared service and is also a customer of the JLT as the costs of the JLT services used by Brighter Futures for Children Ltd are defrayed by the Council alongside its own Adults cases. Reading BC will run the service for itself and the other councils taking into account the Best Value duty of economy, efficiency and effectiveness.
- 1.25. These are the objectives for the new Shared Service Agreement:
 - 1.25.1. JLT is to be a run on a cost recovery basis for all Partners and all worktypes. The Board will oversee future Service developments for JLT. If new worktypes or new parties use the JLT (for instance the Board may wish to look at extending the service to schools) then the Board will oversee the financial model and ensure that the Partners are satisfied with the arrangements.
 - 1.25.2. The Service should consider ways to move away from billable hours to more certain fixed costs to allow Partners to have better budget planning. This might mean that in any one year, the JLT may over or under recover. The aim is therefore for those surpluses / deficiencies to be carried forward; the aim being for the Service to break even over a rolling three-year period. This is the same philosophy that other local authority traded services use to demonstrate they are not making a profit – e.g. building control.
 - 1.25.3. To provide a value for money service with a focus on continuous improvement in the efficiency of the team and transparency of costs.

- 1.25.4. To be accountable for its work and provide the necessary information to allow the Partners to track their expenditure and manage their operations effectively.
 - 1.25.5. To monitor the complex and high-cost cases to ensure these are delivered efficiently, effectively and economically.
 - 1.25.6. To provide value added services such as general advice and training which allow all Partners to take advantage of the expertise of the JLT.
 - 1.25.7. To participate in the improvement of social care and education services generally in Berkshire, this means using the experience of best practice throughout Berkshire to help all Partners to come up to the standards of the best. This has not generally been a role for the JLT, and means a shift from being a wholly reactive service to one which is more pro-active and engaged with the Partners on their own improvement journeys.
- 1.26. The proposed Heads of Terms for the Shared Services agreement are enclosed as **Appendix C**.

Challenges

- 1.27. There are well known difficulties experienced in Children's Services departments with recruiting and retaining a stable and skilled workforce. This has created a consequential difficulty in some compliance with timescales set in the pre-proceedings process and by the Court. There have also been difficulties in the Court timetable and with judicial availability. This creates additional work for JLT to ensure that proceedings are kept to time and that work is delivered to achieve the outcome the Partner authority seeks. This is a current area of focus for JLT in terms of the SLA.
- 1.28. The Partners all have a desire to move from Court work to pre-emptive help at the earliest opportunity through a number of mechanisms. In 2018 the JLT established a dedicated Pre-proceedings Team to ensure a greater focus on making sure that pre-proceedings intervention and support is effective and used to divert cases away from Court or narrowing of contentious issues through early identification of possible kinship carers, narrowing of issues and front-loading of evidence, if care proceedings are necessary.
- 1.29. The use of pre-proceedings in JLT is generally seen as effective and there has been close working with the local senior judiciary. Recent comments from recent OFSTED inspections re pre-proceedings record as follows:
- 1.30. *"Many children's cases are being diverted from unnecessary court proceedings as a result of effective pre-proceedings intervention. Feedback from the judiciary is positive."* Ofsted Focussed Visit Brighter Futures for Children, Reading Borough Council 16 February 2022.

- 1.31. *“Strong pre-proceedings practice ensures parents are aware of what is expected of them. Some impactful work results in parents improving their parenting, allowing them to safely exit pre-proceedings. Senior managers closely monitor this work. Care proceedings are instigated without delay if concerns about children’s safety escalate. Proactive early initial viability assessments of potential family/friend placements are carried out to try and reduce delays in the event that care proceedings are subsequently initiated.”* Ofsted Inspection Report West Berkshire 4 May 2022.
- 1.32. *“Pre-proceedings work is highly effective and letters before proceedings provide a detailed understanding to parents about what is expected of them. As a result, a substantial proportion of families are appropriately diverted from court processes.”* Ofsted Inspection Report Bracknell Forest Council 13 June 2022.
- 1.33. Further CAFCASS have noted a significant reduction in urgent applications in Berkshire, compared to national figures, and that effective pre-proceedings work is a significant contributory factor.
- 1.34. JLT has faced its own resourcing difficulties in attracting professionally qualified staff. In order to provide sufficient coverage of lawyers, JLT has launched a learning and development strategy to ensure that qualified lawyers are grown from within the Service. This is working well and is yielding results.
- 1.35. We have worked with Reading University to build up an internship programme from small beginnings during the pandemic. This summer saw four interns with us for the summer – all of whom were enthused by the work being done in JLT.
- 1.36. We have a number of apprentices working towards legal qualifications. We have developed paralegals to become solicitors and this year, two qualified as solicitors and took up positions in JLT lessening our need for locum lawyers. We have also recruited more trainee solicitors to start in autumn 2022. We aim to eliminate our reliance on temporary locum staff by training and retaining sufficient team members for the Partners’ future needs. We are also working with the Berkshire Monitoring officers to co-operate on the development of the legal workforce across the county, reducing gaps in service and dependence on locum staff.

3. KEY IMPLICATIONS

- 3.1 The following are the key implications of this report.

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
The Royal Borough enters into a new shared services arrangement with JLT and the six other Berkshire LA.	After 1 st Sept 2023	1 st Sept 2023	1 st August 2023	1 st July 2023	

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 There are no financial consequences arising from the new Shared Service Agreement itself. Although the Partners are not required to procure the Shared Service, they are still required to assure themselves of the best value duties of efficiency, effectiveness and economy. It is submitted that this is discharged by scrutiny of JLT in the Board in accordance with the governance structures set up after the 2019 review and developed since then.
- 4.2 The proposed Heads of Terms will enable an arrangement with increased budget stability and sufficient monitoring to enable the early identification of any emerging variances and their cause.

5. LEGAL IMPLICATIONS

- 5.1 Following consultation with Berkshire Monitoring Officers, Reading BC commissioned legal advice from Browne Jacobson solicitors on behalf of all the Partners. This was to provide independent reassurance on the legal implications of the new Shared Services Agreement. This advice has been circulated to the Berkshire Monitoring Officers Group.
- 5.2 The advice confirms that the Partners have power under the sections 1&3 of the Localism Act 2011 (known as the General Power of Competence) to put in place the proposed arrangement.
- 5.3 The key difference between the proposed arrangement and the previous Shared Services Agreement was that the previous agreement only covered the relationship between six councils. It was therefore appropriate to make the Agreement under those various local government powers traditionally used for supplying services and sharing staff between councils. However, a number of councils have now delegated their powers relating to Children's Services to companies using the delegations under the Children and Young Persons Act 2008. This is the case in Reading, Slough and Windsor and Maidenhead.

- 5.4 The legal advice confirms that the Partners can organise the service as envisaged in the Heads of Terms provided that it is undertaken on a cost recovery basis. If the Partners wished to consider a commercial basis for the Service then it would need to be delivered through a company.
- 5.5 As regards procurement, the advice considers that on the current cost recovery model, the Partners fall within the exemption for a public partnership outlined in the Regulation 12 (7) Public Contracts Regulations 2015. This means that the Service is not caught by the requirements of the Regulations to be tendered.
- 5.6 Contracts which are established for co-operation between contracting authorities, contain the following three elements:
- 5.6.1 ***The Contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common.*** Each partner has a statutory duty to provide Children's Services and Adult Social Care. Even if that duty is delegated to a company, that company is a "body governed by public law" in the definitions of the Regulations and is therefore counted as a contracting authority. There is co-operation beyond the mere provision of a supply of a Service by Reading BC. The Heads of Terms envisage a role for all Partners in the governance of JLT and the improvement of the Service for the overall benefit of all the Partners. It is a Shared Service in the mutual interests of all Partners, and the pooling of specialist legal resource in one team allows all the Partners to better navigate the peaks and troughs of work. These features mean that there is a dependency between all Partners not just between one Partner and JLT.
- 5.6.2 ***The implementation of that co-operation is governed solely by considerations relating to the public interest.*** The Heads of Terms confirm that JLT is not a commercial venture and that there is no intention to run it for surplus or profit. The purposes are clearly stated to support the Partners in furtherance of their statutory functions.
- 5.6.3 ***The participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.*** This is not relevant since there is no work performed on the open market. Some work is performed for Berkshire schools in the ASCE team, but this is incidental to the main purposes of the Agreement.
- 5.7 The Partners are therefore able to enter into this Shared Service Agreement and it is not required to be procured via the Public Contracts Regulations.

6. RISK MANAGEMENT

- 6.1 The proposed option is to enter into a shared services arrangement for legal services which support our social services. The arrangement would be shared with the five other Berkshire local authorities. The potential risks arising from the operation of such an arrangement include:

Table 3: Impact of risk and mitigation

Threat or risk	Impact with no mitigations in place or if all mitigations fail	Likelihood of risk occurring with no mitigations in place.	Mitigations currently in place	Mitigations proposed	Impact of risk once all mitigations in place and working	Likelihood of risk occurring with all mitigations in place.
There is a risk that the shared arrangement makes service changes which could result in negative impacts for the quality or cost of services in the Royal Borough.	Major 3	Medium	A senior RBWM officer is a member of the JLT Governance Board, and a senior AfC practitioner is an active member of the JLT operational management group	The JLT lead officer for RBWM will be invited to provide 6 monthly updates to the RBWM service leaders (Children's and Adults) to oversee the strategic plan for JLT	Moderate 2	Low
There is a risk that JLT is unable to deliver the service across Berkshire which could result in service delays which impacts the outcomes for vulnerable residents	Major 3	Low	A senior RBWM officer is a member of the JLT Governance Board	None	Major 3	Low

7. POTENTIAL IMPACTS

- 7.1 Equalities. An Equality Impact Assessment is available as Appendix A.
- 7.2 Climate change/sustainability. This report has no impact on sustainability or climate change, as it proposes to continue with the existing working relationship with a team based locally within Berkshire.
- 7.3 Data Protection/GDPR. There is no Data Protection / GDPR issues arising from this report.

8. CONSULTATION

- 8.1 As covered in section 2 of this report, both the Berkshire Local Authority Monitoring Officers and Chief Executive groups have been involved in moving the proposal to this stage.
- 8.2 The Executive Director of People Services has been engaged with the JLT Steering Group and has ensured that RBWM services which frequently use the JLT provisions are in agreement with the recommendations of this report.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 Implementation date if not called in: 'Immediately'. The full implementation stages are set out in table 4.

Table 4: Implementation timetable

Date	Details

10. APPENDICES

- 10.1 This report is supported by four appendices:

- Appendix A – Equality Impact Assessment
- Appendix B – JLT Child Law
- Appendix C – JLT Adults and Education
- Appendix D – Draft Heads of Terms

11. BACKGROUND DOCUMENTS

- 11.1 This report is not supported by background documents:

12. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
<i>Mandatory:</i>		<i>Statutory Officer (or deputy)</i>	
Adele Taylor	Executive Director of Resources/S151 Officer	27/2/23	1/3/23

Emma Duncan	Director of Law, Strategy & Public Health/ Monitoring Officer	27/2/23	
<i>Deputies:</i>			
Andrew Vallance	Head of Finance (Deputy S151 Officer)	27/2/23	
Elaine Browne	Head of Law (Deputy Monitoring Officer)	27/2/23	2/3/23
<i>Mandatory:</i> Procurement Manager (or deputy) - if report requests approval to go to tender or award a contract			
Lyn Hitchinson	Procurement Manager		
<i>Mandatory:</i> Data Protection Officer (or deputy) - if decision will result in processing of personal data; to advise on DPIA			
Samantha Wootton	Data Protection Officer		
<i>Mandatory:</i> Equalities Officer – to advise on EQiA, or agree an EQiA is not required			
Ellen McManus-Fry	Equalities & Engagement Officer		
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			
Tony Reeves	Interim Chief Executive	27/2/23	
Andrew Durrant	Executive Director of Place	27/2/23	
Kevin McDaniel	Executive Director of People Services		
Tessa Lindfield	Director of Public Health		
<i>Heads of Service (where relevant)</i>			
<i>External (where relevant)</i>			
Lin Ferguson	Director of Children's Services, Achieving for Children	27/2/23	13/3/23

Confirmation relevant Cabinet Member(s) consulted	Cabinet Member for Children's Services, Health and Mental Health	Yes
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REPORT HISTORY

Decision type:	Urgency item?	To follow item?
Non-key decision	No	No

Report Author: Kevin McDaniel, Executive Director of People Services

Equality Impact Assessment

For support in completing this EQIA, please consult the EQIA Guidance Document or contact equality@rbwm.gov.uk

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1. Background Information

Title of policy/strategy/plan:	<u>Shared Service Agreement for Joint Legal Services</u>
Service area:	<u>Adult and Children's Services</u>
Directorate:	<u>People</u>

Provide a brief explanation of the proposal:

- What are its intended outcomes?
- Who will deliver it?
- Is it a new proposal or a change to an existing one?

This proposal is for a revised shared services arrangement with the other five Berkshire Local Authorities. This arrangement will continue the work of the Joint Legal Team based in Reading with a revised agreement concerning Governance, cost and performance management of the overall service.

The ambition is to maintain the high quality work with the local judiciary while delivering increased financial certainty for the council.

2. Relevance Check

Is this proposal likely to directly impact people, communities or RBWM employees?

- If No, please explain why not, including how you've considered equality issues.
- Will this proposal need a EQIA at a later stage? (for example, for a forthcoming action plan)

No. This proposal will establish a joint service arrangement for case by case legal services which will be engaged in all cases where the council requires legal advice or support.

If 'No', proceed to 'Sign off'. If unsure, please contact equality@rbwm.gov.uk

3. Evidence Gathering and Stakeholder Engagement

<p>Who will be affected by this proposal? For example, users of a particular service, residents of a geographical area, staff</p>
<p>Among those affected by the proposal, are protected characteristics (age, sex, disability, race, religion, sexual orientation, gender reassignment, pregnancy/maternity, marriage/civil partnership) disproportionately represented? For example, compared to the general population do a higher proportion have disabilities?</p>
<p>What engagement/consultation has been undertaken or planned?</p> <ul style="list-style-type: none">• How has/will equality considerations be taken into account?• Where known, what were the outcomes of this engagement?
<p>What sources of data and evidence have been used in this assessment? Please consult the Equalities Evidence Grid for relevant data. Examples of other possible sources of information are in the Guidance document.</p>

4. Equality Analysis

Please detail, **using supporting evidence**:

- How the protected characteristics below might influence the needs and experiences of individuals, in relation to this proposal.
- How these characteristics might affect the impact of this proposal.

Tick positive/negative impact as appropriate. If there is no impact, or a neutral impact, state 'Not Applicable'

More information on each protected characteristic is provided in the Guidance document.

	Details and supporting evidence	Potential positive impact	Potential negative impact
Age			
Disability			
Sex			
Race, ethnicity and religion			
Sexual orientation and gender reassignment			
Pregnancy and maternity			
Marriage and civil partnership			
Armed forces community			
Socio-economic considerations e.g. low income, poverty			

Children in care/Care leavers			
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5. Impact Assessment and Monitoring

If you have not identified any disproportionate impacts and the questions below are not applicable, leave them blank and proceed to Sign Off.

<p>What measures have been taken to ensure that groups with protected characteristics are able to benefit from this change, or are not disadvantaged by it? For example, adjustments needed to accommodate the needs of a particular group</p>
<p>Where a potential negative impact cannot be avoided, what measures have been put in place to mitigate or minimise this?</p> <ul style="list-style-type: none"> For planned future actions, provide the name of the responsible individual and the target date for implementation.
<p>How will the equality impacts identified here be monitored and reviewed in the future? See guidance document for examples of appropriate stages to review an EQIA.</p>

6. Sign Off

Completed by: Sarah Moran	Date:
Approved by: Kevin McDaniel	Date:

If this version of the EQIA has been reviewed and/or updated:

Reviewed by:	Date:
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Appendix B - JLT Childcare Law

1. The JLT provides legal advice to Children's Services from the point of a Legal Planning Meeting, as to whether a child's circumstances have crossed the threshold under s31 Children Act 1989 that the child is suffering or is likely to suffer significant harm and this harm is due to the care given to the child, or likely to be given to the child, not being what it would be reasonable to expect a parent to give to him or this harm is due to the child being beyond parental control. If the threshold is crossed, the Legal Planning Meeting decides whether to attempt to divert the family from care proceedings through the pre-proceedings process or to issue care proceedings to safeguard the child immediately and secure a plan for permanency.
2. Whichever route is appropriate, takes into account the three overarching principles of the Children Act 1989:
 - The welfare of the child is the paramount consideration.
 - Delay is prejudicial to the welfare of children (S1(2) CA)
 - If at all possible, children are to be cared for within their family and the aim should be to reunite children and all efforts should be made to achieve this. The least interventionist rather than the more interventionist approach is considered to be in the child's best interest.
3. The Children Act 1989 became legislation on 14 October 1991. Since that date the growing and changing guidance through case law and statutory amendments has created a challenging, complex and ever developing area of law.
4. In April 2008, the Public Law Outline procedure was created to avoid delay in care proceedings. This process puts the responsibility for managing the timetable onto the Court. Any deviation from the Court timetable must be explained by the non-compliant party and the Judge must be satisfied that the explanation meets the prescribed reasons for delay. The reasons for delay are recorded and sent to the Ministry of Justice and are used to compile the performance information that is published nationally.
5. The Public Law Outline also introduced the Pre-proceedings Process (meeting with parents to tell them what they must do to prevent the LA making an application to the Court to remove their children from their care) and the 'front-loading' of evidence which is completed prior to issuing care proceedings.
6. In 2009 the Baby Peter Serious Case Review report was published. The shockwaves from this case reverberated through all areas of child protection including the lawyers that left an "element of fear" (Munro report) in child protection work.
7. The Government's response was to put in place bureaucratic processes and social work became focused on procedure rather than child protection. Problems with recruitment and retention of social workers became a major issue.
8. In 2010 the Munro report recommended cutting down on the Government prescriptive guidance and replacing it with greater trust in professional judgement.
9. In 2011 further guidance was given that care proceedings should be completed with 26 weeks.

10. In April 2014 the revised Public Outline came into effect. It gave new guidance on allocation and gatekeeping of care and supervision orders; the number and type of hearings in care proceedings and the use of new prescribed forms.
11. In April 2014, the Children and Families Act 2014 came into force. This Act placed into statute that care proceedings must be completed within a mandatory 26 weeks, (subject to a limited statutory exception).
12. Leading up to and following the introduction of the 26 week timeline the number of care proceedings dropped considerably. In July 2014 the JLT held only 71 sets of care proceedings across all six unitary authorities.
13. In 2014 the judgment in Re BS, the Court of Appeal re-emphasised that adoption orders were a significant interference with human rights and that where adoption was a realistic option the Court is required to look at all the realistic options, that local authorities should try to propose supports to aid other avenues to the family before reaching the final view that nothing else will do for the child for whom adoption is the proposed plan for permanency. Re BS had a considerable impact on care proceedings and permanency planning for children.
14. Research indicated that nationally local authorities had been using their power under S20 Children Act 1989 to avoid the need to go to Court. This is a duty on local authorities to provide accommodation for a child (who becomes 'looked after') and requires a parent's agreement.
15. 2015 also saw the beginning of Human Rights claims against local authorities for the improper use of S20 CA 1989. Damages were awarded of up to £20,000.00. This caused local authorities to review their use of S20 Children Act 1989 resulting in a significant increase in care proceedings.
16. From May 2015 there was a significant spike in the number of care proceedings being issued. This was a nationwide trend. JLT held 103 cases at that time.
17. The JLT was involved in tightening up the procedures and processes around S20 CA 1989 as often these children were not referred for legal advice.
18. From May 2016 the JLT's work began to increase significantly:
 - May 2016 - 139 cases
 - May 2017 - 156 cases
 - May 2018 - 165 cases
 - May 2019 - 167 cases
 - May 2020 - 136 cases
 - May 2021 - 161 cases
 - May 2022 - 171 cases
19. The requirement to meet the 26 week deadline, the increase in cases and increasing complexity due to Re BS meant the lawyers were managing more cases in a shorter period of time. The inability to meet the 26 weeks deadline and the difficulties faced by Children's Services teams to be able to comply with directions because of unstable locum workforce issues, meant the legal inputs in many cases increased to address these issues within the Court arena. Tracking systems are managed by the Case Managers in JLT to support the clients with complying with

timescales. The average time for cases to conclude across the six client authorities is as follows:

- 2014 - 31.7
- 2015 - 27.9
- 2016 - 31.5
- 2017 - 32.8
- 2018 - 36.7
- 2019 - 34.7
- 2020 - 44.4
- 2021 - 45.5

20. The worsening figures reflects the increasing pressures in client authorities including high staff turnover resulting in drift and delay. However there have also been issues with Court timetables, judicial availability and latterly the challenges brought on by the Covid pandemic.
21. The latest development in Public Law is the “Recommendations to achieve best practice in the child protection and family justice systems”. This was commissioned by the President of the Family Division and whilst it recognises the pressure on professionals working within public law and its intention to simplify the system it makes 52 recommendations, which need to be embedded into practice (both JLT and Children’s Services teams) and recognised in a Service Level Agreement between JLT and the Partners. Work on this is underway.

Complex and high-cost cases

22. Partners are rightly concerned about the number of cases which are categorised as complex. These cases usually involve multiple experts, extensive evidence and lengthy hearings to resolve.
23. When considering these cases, it must be remembered that it is for the local authority to prove, on the balance of probabilities, the facts upon which it seeks to rely. It is not for the parent to disprove the case. If the local authority is challenged on a factual point, it must adduce proper evidence to establish what it seeks to prove and produce the best evidence to support its case. A key feature of complex cases is that the parents challenge the facts and witness statements need to be collected. For example, in some complex cases there have been 40+ witnesses required to prove the LA’s case (these include witnesses from partner agencies).
24. A complex case is defined by JLT as a case that has one or more of the following factors:
 - Complex emotional abuse cases with a long history, a novel background or fabricated or induced illness.
 - Serious child injury or death of a child in the family including those with a pool of potential perpetrators and complex or conflicting evidence.
 - Serious sexual abuse cases where there are multiple perpetrators
 - Cases with an international element requiring consideration of complex legal issues
 - The case is sensitive to the client authority

25. By their very nature complex cases are high-cost cases. King's Counsel is often instructed to manage the serious and complex nature of the work. This becomes a significant extra cost. KC's often work on only one or two cases so they can manage the volume of work produced in a complex local authority case. A senior junior barrister may be able to manage the complexity but does not hold an exclusive practice and does not, therefore have the time to concentrate on the detail; this can impact negatively on the outcome of a case.
26. In recent years JLT has worked with Partners to manage the high-cost cases and ensure there is proper management oversight of cases which are briefed to outside counsel. The high cost of these cases is exacerbated by the increase in complexity which JLT has seen both during and post the covid pandemic. These can be illustrated by the number of Court days required to bring these cases to a conclusion.
27. In 2021-22 (figures up to August 2022), the following cases were concluded: 20 x 5 days, 1 x 6 day hearing, 3 x 7 day hearings, 3 x 10 day hearings, 4 x 8 day hearings, 1 x 11 day hearing, 1 x 15 day hearing, 1 x 20 day hearing and 1 x 26 day hearing.

Summary

28. The history of childcare work since JLT was founded is therefore a story of greater focus on timescales and decreasing risk tolerance at a national level, greater judicial scrutiny of s20 arrangements and permanency planning through adoption, greater complexity and procedural requirements throughout the system. All of this has resulted in additional work and a growth of the team to the current levels. Throughout that time, the JLT childcare teams have acted as a safety-net for the Partners, always being available to respond and adapt to the changing environment.

Appendix C - JLT Adult Social Care and Education (ASCE)

1. The increase in interest in these areas by Government has seen this area of law grow and develop at a rapid rate. The ASCE Team is the JLT's largest growth area and its very successful in achieving good legal outcomes for the Partners, particularly in defending local education authorities from potentially expensive Special Educational Needs (SEN) placements.

SEN Appeals

2. There has been a dramatic rise in the number of children and young people eligible for Education, Care and Health Plans (EHCP'S), this is a nationwide increase. The information below shows an increase in SEND work across four JLT client authorities. We are dealing with more complex cases which require expert and focused legal input to achieve good outcomes for clients. For example, we have seen increased cases where parents are appealing for expensive placements such as residential colleges, such placements are in excess of £250,000 per annum and the standard course is for three years, equalling nearly £1,000,000 for each placement. We are working with adult social care teams and local colleges to draft packages of social care and educational provision that can meet the needs of adults with special educational needs whilst also ensuring that they continue to maintain their links with the local community.
3. We have seen a substantial increase in SEN appeals accompanied with SAR, FOIA requests, letters from councillors requesting information on the decision made. Letters before action threatening damages claims for lack of educational provision. Letters before action threatening judicial reviews for loss of educational provision. There is an increase in complex appeals for pupils especially in relation to packages of social care support and bespoke educational provision outside of school. We have concluded a successful appeal where the parents were seeking a home placement with costs of educational provision and care support amounting to over £450,000 per annum.

Cost avoidance in SEN cases in 2022:

• Slough:	£30,000
• WBC:	£243,000
• RBWM:	£7,000
• Reading:	£150,000
Total YTD:	£430,000

4. We have been instructed by schools in the borough to represent them on disability discrimination appeals. We have achieved successful outcomes for the schools. Our Discrimination Disability success rate is 100%

Education prosecutions

5. We are assisting two councils with education prosecutions. The new guidance and duties that councils have was shared in a team meeting on 26th September to Wokingham, RBWM and RBC. Training for the education welfare officers is proposed for November.

Fair cost of care exercise guidance

6. We are working with clients on the costs of care exercise and have drafted guidance notes.

Judicial Reviews

7. We have seen a significant increase in judicial review cases, these are predominantly on the putative unaccompanied asylum-seeking children (UASC) who arrive in the UK and claim to be minors requiring s17 and s20 Children Act services. We have provided training to clients on the Merton compliant evidence required to challenge such cases and have provided precedent statements to assist social services departments. Successful challenges have been achieved where we have been able to produce corroborating evidence. These cases require immediate attention and have significant cost implications for Partners if they are not dealt with properly. Judicial Reviews are becoming increasingly complex and there are firms of solicitors who now have dedicated teams to challenge decisions made by public bodies on behalf of their clients.

The Table below clearly illustrates how the number of fee-earning hours spent on JR cases has increased since 2018-19:

Judicial Review Hours

Judicial Review	2019-20	2020-21	2021-22	2022-23	Grand Total
Sum of Hours	597.28	332.3	1035.62	665.56	2630.76

Note 22-23 figures are April - September inclusive.

Client	2019-20	2020-21	2021-22	2022-23	Grand Total
JLT - Advice to schools (all clients)	25	1	171	96	293
JLT - Bracknell Forest Council	7640	6474	7742	4128	25984
JLT - Bracknell Forest Council (Adult Social Care)			12	4	16
JLT - Reading Borough Council	16795	14875	12323	5701	49693
JLT - Reading Borough Council (Adult Social Care)	2683	1671	3931	1843	10128
JLT - Royal Borough of Windsor & Maidenhead	6133	6129	7631	4358	24251
JLT - Royal Borough of Windsor and Maidenhead (Adult Social Care)	1313	1662	1922	703	5600
JLT - Slough BC (EDUCATION ONLY)	501	538	835	699	2574
JLT - Slough Children First	13351	13462	12529	6452	45795
JLT - West Berks Council	5066	5245	5179	3480	18969
JLT - Wokingham Borough Council	7464	6572	5026	4197	23259
JLT - Wokingham Borough Council (Adult Social Care)	1180	1620	1347	599	4746
JLT - Wokingham Borough Council (SEND)	1422	857	1074	471	3823
Grand Total	63571	59107	59722	32731	215131

Hours rounded.

Court of Protection cases

8. We have seen an increase of COP cases, overall, for all client authorities an increase of 30%. We predict a general increase of COP work. The new liberty protection safeguards will be in place in 2023, training and guidance notes will be provided by Spring 2023.

Inquests

9. We have advised both Wokingham and Reading on Inquests this year, We have attended an inquest on Wokingham's behalf and reported on the case to all agencies concerned.
10. OA review of recent case activity shows a marked 52% increase in cases over the last four years:

Ombudsman cases

11. The ASCE Team, is now seeing an increased number of complaints and claims being made by parents to the Local Government Ombudsman for failure to provide alternative educational provision. In one case concerning Surrey this year the LGO ordered an award of £10,000. In Berkshire, there are still a large number of children who have not returned to school following the pandemic and so there is potential for claims to be made against our Partners as a result.

Increase in ASC&E cases from 2018-19 to 2021-2022											
	Education	JR	Education	JR	Adult Social Care	Adult Social Care	Adult Social Care	Adult Social Care	Education	Education	
Client	Brighter Futures for Children	Slough Children First	Achieving for Children	Wokingham Borough Council	Reading Borough Council (Adult Social Care)	RBWM (Adult Social Care)	Wokingham Borough Council (Adult Social Care)	Slough BC Education	Wokingham Borough Council (SEND)	TOTAL	
ASC&E cases issued 2018-19	29	4	36	1	50	28	34	12	16	211	
ASC&E cases issued 2019-20	41	7	14	0	47	34	46	6	20	216	
ASC&E cases issued 2020-21	59	11	19	3	65	45	45	13	26	286	
ASC&E cases issued 21/22	63	16	22	8	69	50	48	16	29	321	
Increase from 2018-19 to 2021-22%											52%

ASC & Education Team Hours (based on work types)

Client	2019-20	2020-21	2021-22	2022-23	Grand Total
JLT - Reading Borough Council	2569.78	3063.49	2502.16	977.76	9113.19
JLT – Reading Borough Council (Adult Social Care)	2649.7	1564.68	3910.91	1760.61	9885.9
JLT - Royal Borough of Windsor & Maidenhead	1242.59	810.08	833.9	662.34	3548.91
JLT - Royal Borough of Windsor and Maidenhead (Adult Social Care)	1309.42	1656.36	1921.68	702.74	5590.2
JLT - Slough BC (EDUCATION ONLY)	500.96	538.35	835.05	699.35	2573.71
JLT - Slough Children First	1264.91	1014.04	810.21	423.82	3512.98
JLT - Wokingham Borough Council	228.51	213.2	277.35	156.1	875.16
JLT – Wokingham Borough Council (Adult Social Care)	1170.14	1494.15	1281.67	590.94	4536.9
JLT – Wokingham Borough Council (SEND)	1421.58	856.78	1074.18	470.57	3823.11
Grand Total	12357.59	11211.13	13447.11	6444.23	43460.06

Judicial Review Case Numbers (based on work types)

Client	2019-20	2020-21	2021-22	2022-23	Grand Total
JLT - Bracknell Forest Council				2	2
JLT - Reading Borough Council	1	4	23	2	30
JLT – Reading Borough Council (Adult Social Care)	1	1	3		5
JLT - Royal Borough of Windsor & Maidenhead	2	3	1	1	7
JLT - Royal Borough of Windsor and Maidenhead (Adult Social Care)				1	1
JLT - Slough Children First	14	7	18	8	47
JLT - West Berks Council			1		1
JLT - Wokingham Borough Council	2	1			3
JLT – Wokingham Borough Council (Adult Social Care)			1		1
JLT – Wokingham Borough Council (SEND)		2	1	2	5
Grand Total	20	18	48	16	102

Appendix D

Joint Legal Team

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

Draft dated: Changes following 20 October 2022 meeting

Context - this note 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:

- Legal Powers
- Indemnity and insurance
- Assignment and sub-contracting
- Variation clauses
- Termination clauses
- Intellectual property
- Duty to co-operate with any complaint
- Disagreement and disputes
- Public body/local government statutory requirements such as FOI, DPA 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 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. (Primarily SENDIST work but also includes other worktypes such as School attendance prosecutions).
 - 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. Any changes in scope to be advised to the Board (see below).
 - 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 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) to ensure that all relevant issues which pertain to the JLT have been brought into this Heads of Terms negotiation and advised to the other partners.

Organisation	Representative
Bracknell Forest Council	Manjit Hogston

Reading BC (including Brighter Futures for Children)	Brian Grady
Royal Borough of Windsor and Maidenhead	Lin Ferguson
Slough BC (including Slough Children First)	Carol Douch
West Berkshire Council	Pete Campbell
Wokingham BC	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 (JAB) 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 of the delivery 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 JAB.
- 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, transitional and consequential costs to leave the Reading BC in a neutral position. Exceptional circumstances - where multiple partners are dissatisfied and seek to leave the Service and where Reading BC has been unable to affect change in JLT and the JAB has been unable to affect change to the necessary improvements in service.
- 14) Where one party seeks to leave the agreement, it is expected that they will be responsible for meeting any one off, transitional and consequential costs, unless those costs can be absorbed in the remainder of the Service. E.g. if staff can be redeployed to the benefit of a remaining council.
- 15) Where Reading BC seeks to make exceptional changes requiring investment in the team or redundancies, it will consult with the Councils via the JAB 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 Councils impacted by the change has been received (and not unreasonably withheld). 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 JAB 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

Term of this Agreement

- 18) The term of this Agreement shall be 5 years from the date of completion of the Agreement.

Accountability

- 19) 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, and JAB will agree, 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.
- 20) Reading BC will ensure that a schedule of meetings is developed to allow the councils to review the reports and performance information. This will include strategic, operational and financial meetings which allow the councils to scrutinise their performance information.
- 21) The JAB will agree a mechanism upon recommendation from Reading BC for the projection of financial commitments for cases and disbursements. To be monitored through the JAB.
- 22) The JAB will agree 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.
- 23) The sufficiency of performance data will be agreed by all parties as part of the JAB 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.
- 24) 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 (to the requesting council) if it requires support from the software supplier to implement.

Service volumes

- 25) 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.
- 26) 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

- 27) 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 interventionalist process that meets the needs of the vulnerable child or adult and always in accordance with the preventative presumption mentioned at paragraph 5 above
- 28) The responsibilities of partners will be itemised in Service Level Agreements which will be negotiated with JAB to ensure that all partners can work as efficiently and effectively as possible and make the best use of resources.
- 29) [Performance measures - can be in SLA or the Service Development Plan - see Governance section post - most likely SLA]
- 30) Each council should appoint a contract manager to be the main point of contact under this Shared Services Agreement.

Current costs - hourly rates

- 31) Budget Setting will start in October each year with a view to preparing Draft Budgets which allow the partners to understand costs for the following year and the - Process by which costs are included as overhead costs.
- 32) There will be an End of Year calculation of costs. This will be reviewed in the January of each year to complete after Year End. This will be based on a true up between costs, based upon total costs and based upon utilisation of the services using the number of hours incurred as a measure of activity. The True-up is to review whether costs were over or below expected, so that amendments can be made in the following year.
- 33) 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.
- 34) 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.
- 35) 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, ICT, and Finance) and property costs and also includes costs associated to the management of a legal service including registration fees, insurance, legal software and library resources.
- 36) 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.
- 37) 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
 - f) Team Leaders
 - g) Assistant Director
- 38) Overheads from a proportion of administrative staff time and managerial time will be built into the hourly rates. These proportions will be reviewed annually by JAB to ensure there is no element of double counting of time that is overhead and time which is directly charged.
- 39) Reading BC will issue invoices monthly in arrears after reports have been sent to allow for necessary enquiries to be made on cases and time spent etc.
- 40) [End of Year reconciliation & balancing charge payable - there should be a process which is agreed by JAB (and s151 officers) so that some amounts might be “cleared off” in the year are not carried forward. Some guidance on management of variances will be agreed through JAB.
- 41) JAB to challenge JLT to make financial savings which can be realised by the councils. These requirements to be built into the SDP.

Disbursements

- 42) 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.
- 43) 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]
- 44) Reading BC will 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
- 45) The host council may enter into a Dynamic Purchasing System or Framework Agreement on behalf of the councils and 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

- 46) 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, Reading BC will produce headline reports for spend for entire service across all councils. Both instances, spend for cases and service level should be forecasted.
- 47) 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.
- 48) 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.
- 49) JLT will issue invoices in week 3 of the month to each client department in accordance with Schedule 2 [procedures and contacts for invoices]
- 50) The final outturn for the preceding financial year will be delivered to JAB by end May in each year.

- 51) Agency Costs. JLT will identify circumstances where councils are paying additional fees because of agency costs for temporary staff. A mechanism to monitor this is to be agreed through JAB.

High Costs cases

- 52) Where high cost complex cases arise (fees projected to be > £x], 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

- 53) In agreement with all parties, JLT will seek to move from a position of charging by hourly rates to a system of planned fixed budgets which allow the parties to have more certainty on costs. This will utilise experience from predicting costs on routine matters (para 19 above) and the project management of High Cost cases (para 42 above).
- 54) This objective will be overseen by JAB to ensure that all councils agree the assumptions behind the future charging model.
- 55) Use of external Counsel will be monitored through JAB. JLT will not seek to use external counsel where inhouse expertise exists. JLT will continually monitor the need for internal capacity to undertake advocacy and Court appointments in the most cost effective way.

Governance

- 56) This partnership agreement will be monitored through JAB. JAB is not a formal committee between the councils - it is an informal officer working group for the purpose of securing accountability under this Agreement.
- 57) Each party to nominate at least one member of staff to attend JAB and to ensure attendance by a deputy or alternate if the first choice is not available. This may include Service representatives and/or finance representatives.
- 58) The objectives of JJAB are to monitor the achievement of JLT objectives under this Agreement and to agree a Service Level Agreement (SLA) and Service Development Plan (SDP) which outline further detailed service standards, objectives and performance improvement milestones for the JLT.
- 59) The Terms of Reference of JAB will be agreed by consensus by JAB and kept under review to ensure flexibility. The ToR can only be amended with the consent of all the parties.
- 60) The Terms of Reference may 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
- 61) The intention is for JAB to have the ability to ask for more information and meetings when required, but to reduce contact where things are working as anticipated.

- 62) Reading BC will prepare the Service Level Agreement and the Service Development Plan for JAB to agree. Reading BC will service the JAB and provide a range of management information as envisaged by the SLA and SDP.
- 63) Nothing in the SLA or SDP should require Reading BC to incur expenditure which is not agreed in the Council's JLT budget.

Change control

- 64) 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. JAB 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.
- 65) 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' written notice. JAB 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 JAB agree that a shorter notice period will have no negative effect on service a shorter notice period may be negotiated.

Termination clauses

- 66) To exit the Joint Agreement (i.e. removing all of the services from JLT) a party must consult JJAB (allowing adequate time for meaningful consideration and dialogue) and give at least 12 months' notice.
- 67) Where JLT consistently defaults on the service standards as set out in the SLA, and the matter has been referred to JAB for resolution, and there has been no improvement from JLT then the aggrieved party may give six months' notice to expire at any time to exit the Joint Agreement.
- 68) The costs of exit in terms of staff redundancy and other direct costs are to be paid by the exiting party to the host council. Where these costs are not agreed the matter shall be referred to the JAB for mediation. Where there remains disagreement, this is to be resolved by the Berkshire Chief Executives.
- 69) Where there has been consistent default by JLT, and where JAB has not been able to affect a change, then costs arising from the default may be attributable to Reading BC. JAB to have a role in the fair apportionment of costs.
- 70) 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.

