



ORBIS PUBLIC LAW JOINT COMMITTEE

FRIDAY, 20 JANUARY 2017

11.30 AM MEMBERS' CONFERENCE ROOM, COUNTY HALL, SURREY COUNTY COUNCIL,
KINGSTON-UPON-THAMES

MEMBERSHIP - Councillor Denise Le Gal (Chair), (Surrey County Council)
Councillors Richard Burrett (West Sussex County Council), David Elkin (East
Sussex County Council) and Les Hamilton (Brighton & Hove City Council)

A G E N D A

- 1 Apologies for Absence
To receive any apologies for absence.
- 2 Minutes of the Previous Meeting (*Pages 1 - 6*)
To agree the minutes of the previous meeting as a correct record of the meeting.
- 3 Declarations of Interest
All Members present are required to declare, at this point in the meeting or as soon as possible thereafter
 - i. Any disclosable pecuniary interests and / or
 - ii. Other interests arising under the Code of Conduct in respect of any item(s) of business being considered at this meeting

NOTES:

- Members are reminded that they must not participate in any item where they have a disclosable pecuniary interest
- As well as an interest of the Member, this includes any interest, of which the Member is aware, that relates to the Member's spouse or civil partner (or any person with whom the Member is living as a spouse or civil partner)
- Members with a significant personal interest may participate in the discussion and vote on that matter unless that interest could be reasonably regarded as prejudicial.

4 Procedural Matters

a Members' Questions

The deadline for Members' questions is 12pm four working days before the meeting (16 January 2017).

b Public Questions

The deadline for public questions is seven days before the meeting (13 January 2017).

- 5 Shared Legal Services Agreement (*Pages 7 - 14*)
To update the Orbis Public Law (OPL) Joint Committee on the development of the Shared Legal Services Agreement between Brighton & Hove City Council , East Sussex

County Council , Surrey County Council and West Sussex County Council.

- 6 Orbis Public Law Budget 2017/18 (*Pages 15 - 20*)
To provide details of the Orbis Public Law (OPL) Operating Budget for 2017/18, and to provide details on how the OPL partnership will operate a shadow year for 2017/18.
- 7 Review of Advocacy for Childcare Proceedings (*Pages 21 - 24*)
To update the Orbis Public Law Joint Committee on progress in carrying out a review of advocacy for childcare proceedings across the Orbis Public Law (OPL) partners.
- 8 Commercial Pathfinder Project (*Pages 25 - 30*)
To update the Orbis Public Law Joint Committee on the Integration of the partner authorities' Commercial Law teams.
- 9 Date of Next Meeting
The next meeting of the Orbis Public Law Joint Committee will be held on 3 April 2017.

PHILIP BAKER
Assistant Chief Executive
County Hall, St Anne's Crescent
LEWES BN7 1UE

12 January 2017

Contact Martin Jenks, Senior Democratic Services Advisor,
01273 481327
Email: martin.jenks@eastsussex.gov.uk

Agenda Item 2

MINUTES of the meeting of the **ORBIS** Public Law Joint Committee held at 2.00 pm on 31 October 2016 at Members' Conference Room, County Hall, Kingston-upon-Thames.

These minutes are subject to confirmation by the Committee at its meeting on Friday, 20 January 2017.

Elected Members:

- * Councillor Denise Le Gal (SCC) (Chair)
- * Councillor David Elkin (ESCC)
- * Councillor Richard Burrett (WSCC)
- * Councillor Les Hamilton (BHCC)

* = In attendance

Apologies

None

In attendance

Abraham Ghebre-Ghiorghis, Executive Lead Officer for Strategy, Governance and Law, Brighton and Hove City Council

Andrea Kilby, Orbis Public Law Business Development Manager

Ann Charlton, Director of Legal, Democratic and Cultural Services, Surrey County Council

Emma Nash, Orbis Public Law Project Manager

Marie Nickalls, Orbis Public Law Finance Lead, East Sussex County Council

Philip Baker, Assistant Chief Executive, East Sussex County Council

Tony Kershaw, Director of Law, Assurance & Strategy, West Sussex County Council

1 APOLOGIES FOR ABSENCE [Item 1]

None received.

2 DISCLOSURE OF INTERESTS [Item 2]

There were none.

3 PROCEDURAL MATTERS [Item 3]

a MEMBERS' QUESTIONS [Item 3a]

There were none.

b PUBLIC QUESTIONS [Item 3b]

There were none.

4 ORBIS PUBLIC LAW JOINT COMMITTEE TERMS OF REFERENCE [Item 4]

Declarations of interest:

None

Witnesses:

Abraham Ghebre-Ghiorghis, Executive Lead Officer for Strategy, Governance and Law, Brighton and Hove City Council

Ann Charlton, Director of Legal, Democratic and Cultural Services, Surrey County Council.

Philip Baker, Assistant Chief Executive, East Sussex County Council

Tony Kershaw, Director of Law, Assurance and Strategy, West Sussex County Council

Key points raised during the discussion:

1. The Committee received an introduction to the report from officers who advised that the recommendations only required Members to note the Terms of Reference for the Orbis Public Law Joint Committee as these had previously been agreed. Officers highlighted, however, that the Joint Committee had the power to amend the Terms of Reference as and when this was deemed to be necessary.
2. The Committee was advised that each authority could appoint one substitute to the Joint Committee. Officers indicated that Brighton and Hove City Council's substitute to the Joint Committee would be appointed on an annual basis.
3. Members were told that specific standing orders had not been compiled for the Joint Committee as it had been agreed that it would follow the standing orders of the authority that was hosting the meeting.

Actions/ further information to be provided:

None

RESOLVED: That the Orbis Public Law Joint Committee:

- i. noted the Terms of Reference agreed by the constituent authorities as set out in Annex 1 to the report; and
- ii. agreed that meetings are chaired by the Lead Member for the authority hosting the meeting.

5 PROJECT APPROACH AND PROGRESS [Item 5]

Cllr David Elkin arrived at the meeting at 14.20 during the discussions on this item.

Declarations of interest:

None.

Witnesses:

Abraham Ghebre-Ghiorghis, Executive Lead Officer for Strategy, Governance and Law, Brighton and Hove City Council

Andrea Kilby, Orbis Public Law Business Development Manager

Ann Charlton, Director of Legal, Democratic and Cultural Services, Surrey County Council

Emma Nash, Orbis Public Law Project Manager

Philip Baker, Assistant Chief Executive, East Sussex County Council

Tony Kershaw, Director of Law, Assurance and Strategy, West Sussex County Council

Key points raised during the discussion:

1. Officers introduced the report detailing the rationale behind the creation of the Orbis Public Law partnership. Each of the four partner authorities had faced a sharp increase in demand on their legal services departments in recent years driven chiefly by a steep rise in the number of child protection cases. The Committee was advised that pooling resources across the partner authorities would lead to significantly improved resilience across the four legal services teams. Members were further informed that the partnership should enable the sharing of knowledge and expertise in specific areas of law while also reducing reliance on external advocacy services thereby contributing to financial savings across the partnership. Further spending reductions would also be achieved by enabling paralegals to take on a greater volume of the workload thereby reducing reliance on barristers and solicitors.
2. Members requested further information on the degree to which the four authorities relied on external advocates to help deal with the volume of caseloads. Officers indicated that, at present, each team employed advocates with the expectation being that they would be able to manage a proportion of the expected volume of cases. Where there was a particularly complex case or the number of cases exceeded capacity, it was necessary to use external advocates. For this, and reasons of significant growth in cases in other areas, East Sussex County Council (ESCC) had had a drive to reduce spending on external advocates which meant it had significantly lower expenditure in this area than the other authorities in the partnership. Collective spending on legal costs related to childcare across the four councils in the 2015/16 financial year was £3.25 million of which £1.7m was spent on external advocacy services. The Orbis Public Law

partnership would help to reduce costs in this area by creating a single pool for advocacy services as well as facilitating the sharing of specialist legal knowledge across teams.

3. The Committee was advised that there was an aspiration to develop an electronic court system which would not only help to reduce costs but would also enable court proceedings to be paperless and more efficient.
4. Officers highlighted that the partnership would seek opportunities to generate income by offering legal advice to public sector organisations on areas where there is expertise across the partnership. A commercial pathfinder had been created and officers were in the process of developing an organisational structure for Orbis Public Law designed to support income generation. Members were advised that clarification was being sought regarding the Solicitors Regulation Authority's interpretation of whether the provision of legal services to external organisations by Orbis Public Law would be permitted or whether it would be necessary to establish an independent trading company in order to do this.
5. Members were informed that change management sessions and staff forum meetings had taken place across the four authorities as a means of engaging staff in the development of the partnership. The Committee asked how staff perceived the transition to Orbis Public Law. Officers reported that staff were generally happy with the change and the majority appeared to accept that it was necessary to make financial savings. The Committee was further told that improved career opportunities could also assist in the recruitment and retention of legal services staff while increased resilience may also help to balance caseloads.
6. The Committee inquired about the extent to which the recruitment and retention of staff was a challenge for legal services teams across the four partner authorities. Officers confirmed that there were difficulties in relation to the recruitment and retention of staff and that this had been the case for many years as a result of strong competition in critical areas of expertise. It was hoped that improved career opportunities arising from the partnership, particularly for younger members of staff, would help to address some of the challenges around recruitment and retention.
7. Officers highlighted the shared IT system for Orbis Public Law which was already in use across all of the partners with the exception of West Sussex County Council (WSSC). WSSC was working to ensure that the system was compatible with its existing internal governance, arrangements that formal approval to adopt the new system had been given and it was anticipated the system could be in place in the Spring of 2017.
8. Members asked how the partnership would demonstrate that it was helping to contain legal services costs for each of the four authorities. Officers highlighted that there was a clear action plan which would generate savings across the partnership. A reduction in spending on external legal services teams within each authority, however, would be the clearest demonstration that the Orbis Public Law was successfully containing costs.

Actions/ further information to be provided:

None

RESOLVED: That the Orbis Public Law Joint Committee:

1. noted the approach for designing and implementing the single service; and
2. noted the progress made towards achieving this goal.

6 FINANCE UPDATE [Item 6]

Declarations of interest:

None

Witnesses:

Abraham Ghebre-Ghiorghis, Executive Lead Officer for Strategy, Governance and Law, Brighton and Hove City Council

Ann Charlton, Director of Legal, Democratic and Cultural Services, Surrey County Council.

Philip Baker, Assistant Chief Executive, East Sussex County Council

Tony Kershaw, Director of Law, Assurance and Strategy, West Sussex County Council

Marie Nickalls, Orbis Public Law Finance Lead, East Sussex County Council

Key points raised during the discussion:

1. Members received an introduction to the report including details of how financial contributions to and savings from Orbis Public Law would be apportioned across the four constituent organisations. The Committee was advised that savings achieved would be divided according to the amount of money that each organisation committed to the partnership budget as well as factoring in the extent to which each of the partners utilised Orbis Public Law services. The savings achieved through the partnership would then be returned to each sovereign authority as opposed to being retained within the partnership.
2. Members were further informed that budget contribution ratios by individual authorities could also be flexed in accordance with the amount that each council utilised Orbis Public Law. This would be reviewed annually. The Committee asked whether it would be possible to undertake an in year review of funding contribution ratios. Officers indicated that if use of Orbis Public Law services by an individual authority exceeded 10% of the agreed amount then this would trigger an automatic review of contribution ratios although measures would be put in place to avoid reaching this point. This would be enshrined within the Inter-Authority Agreement (IAA) which was in the process of being drafted. Officers were asked to bring the IAA to the next Joint Committee meeting for consideration.
3. The Committee inquired as to how external legal services would be funded and were informed that it was proposed that these

continued to be paid for by individual authorities. This was due to the fact that budgeting arrangements for external legal services was done differently across the four councils. The intention was, however, to create a single pool for external legal services which would reduce costs for each authority. Members requested that officers draw up proposals on how external legal services could be paid for through the central Orbis Public Law budget for consideration by the Joint Committee.

4. Members stressed that without concrete examples it was challenging to develop a picture of how the finances for Orbis Public Law would operate. Officers were therefore asked to provide clear examples of the partnership's financial arrangements for the next finance update due to be considered by the Joint Committee.

Actions/ further information to be provided:

1. An item on the Inter-Authority Agreement to be brought to the Orbis Public Law Joint Committee meeting in January 2017.
2. Officers to model how funding external advocacy services through the central Orbis Public Law budget would operate.
3. The next finance update for consideration by the Joint Committee should provide clear examples of the financial arrangements for Orbis Public Law.

RESOLVED; That the Orbis Public Law Joint Committee:

- i. Note the report and key financial principles to be used for Orbis Public Law; and
- ii. await a paper on 20 January 2017 to set out the joint Orbis Public Law budget which will be recommended for approval.

7 DATE OF THE NEXT MEETING [Item 7]

The Committee noted that its next meeting would be held on 20 January 2017.

Meeting ended at: 3.43 pm

Chair

**BRIGHTON & HOVE CITY COUNCIL, EAST
SUSSEX COUNTY COUNCIL, SURREY COUNTY
COUNCIL AND WEST SUSSEX COUNTY
COUNCIL**



ORBIS PUBLIC LAW JOINT COMMITTEE

DATE: 20 JANUARY 2017

**LEAD OFFICERS: ABRAHAM GHEBRE-GHIORGHIS (EXECUTIVE LEAD OFFICER FOR STRATEGY, GOVERNANCE AND LAW, BHCC),
ANN CHARLTON (DIRECTOR OF LEGAL, DEMOCRATIC AND CULTURAL SERVICES, SCC),
PHILIP BAKER (ASSISTANT CHIEF EXECUTIVE, ESCC);
AND
TONY KERSHAW (DIRECTOR OF LAW, ASSURANCE AND STRATEGY, WSCC).**

SUBJECT: SHARED LEGAL SERVICES AGREEMENT

PURPOSE OF REPORT:

To update the Orbis Public Law (OPL) Joint Committee on the development of the Shared Legal Services Agreement between Brighton & Hove City Council , East Sussex County Council , Surrey County Council and West Sussex County Council.

INTRODUCTION

The Shared Legal Services Agreement (SLSA) will form the legal basis for the Orbis Public Law (OPL) shared service. The terms of the SLSA are substantially settled and are summarised below for discussion and noting by the Joint Committee.

Three outstanding areas remain. These are the OPL Budget and Staff Management Protocol and the refinement of the indemnity and liability paragraphs to reflect the ongoing discussions with the insurance market which will need to be finalised prior to sealing the SLSA. The timescale for this is by 31 March 2017.

RECOMMENDATIONS:

It is recommended that the Orbis Public Law Joint Committee consider and note the content of the SLSA between Brighton & Hove City Council (BHCC), East Sussex County Council (ESCC), Surrey County Council (SCC) and West Sussex County Council (WSCC).

REASON FOR RECOMMENDATIONS:

The SLSA provides the legal framework for the shared service and clarifies the responsibilities of each council to the others. The Committee's views and any recommendations will be taken into account in exercising the authority to

finalise the SLSA, previously delegated by each Council to its Monitoring Officer, Chief Executive and/or Lead Member.

DETAILS:

Shared Legal Services Agreement

1. The SLSA sets out the context and forms the legal basis for the shared service through which each of the partner councils agreed, last year, to deliver their legal services functions. It is a legally binding agreement but does not create a legal entity separate from the partner Councils. A very similar agreement has been successful in establishing the initial governance to the Orbis business services partnership between Surrey County Council and East Sussex County Council and which is in the process of being updated to incorporate Brighton & Hove City Council. West Sussex County Council are not part of Orbis. Work to date in exploring the business case for delivering legal services through a limited company “ABS” has not established that there is currently a compelling business case to invest the resource required to develop and maintain a free standing legal practice, regulated by the Solicitor Regulation Authority. However the proposed agreement for the four councils entering into the SLSA will provide OPL with the certainty and governance it needs to deliver a single resilient, sustainable and cost effective legal service with an ability and ambition to grow.
2. Two key principles underpinning the SLSA are that the councils will both deliver and procure their legal services through the shared service known and branded as Orbis Public Law (OPL) and will work together in good faith and in an open and collaborative manner. Key objectives enshrined in the agreement include delivering long term efficiencies, savings and benefits to the Councils and developing increased internal resilience and capacity and thereby reducing dependence on external expertise.
3. The key provisions within the agreement include:
 - I. General principles
 - II. Governance
 - III. Financial contributions/benefits
 - IV. Objectives of the partnership
 - V. Disputes and complaints
 - VI. Termination of the agreement
 - VII. Indemnities and liabilities
 - VIII. Confidentiality and data protection
 - IX. Staff Management
4. A summary of the more detailed provisions is as follows:

I. The Joint Committee

Whilst day to day operational management of OPL is for legal services staff, under the leadership of an executive committee comprising each of the councils' Monitoring Officers, the SLSA sets out the Joint Committee's role in overseeing and monitoring service delivery, formulating an operational budget on an annual basis to recommend to the councils for approval, agreeing and monitoring the OPL Business Plan as well as agreeing and monitoring OPL's Operational Budget.

II. Term

The period of partnership is not limited to a fixed term, but there are mechanisms to allow one of more partners to exit – see below:

III. Finances

The principle for a shared budget is that each of the partner Councils provides a financial sum calculated through an agreed contribution ratio, which in the first year will be agreed by reference to the budget set for each of the partner legal services by its authority. The agreed contribution ratio is the means by which both operating costs, savings and income will be shared in future years. More detail of this is provided in the budget report included in this agenda. It would also be used, once fully integrated, to apportion any overspend that arose during operation of the shared services.

IV. Staffing

Staff will not see changes to their employer or to terms and conditions of employment. Each council agrees to place its legal services' staff at the disposal of the other – effectively agreeing to share staff across the partnership. The Legal Services delivered by OPL will be carried out by those staff. Employees will be managed and recruited in accordance with a Staff Management Protocol which is currently under development. This will include arrangements for all staff to be consulted. The proposed text of the protocol is being developed by members of staff from each authority and drawing from the work on team integration that various working groups are developing.

V. Accommodation

Staff will continue to operate out of premises owned by each of the partner councils. This will include provision for staff of any partner to use the facilities of any of the others.

VI. Disputes

Any dispute between the partners would in the first instance go to the Executive Board which comprises of the Monitoring Officers. If they

cannot resolve the dispute it is escalated to the Chief Executives of the partner authorities. Mediation or arbitration (depending on the nature of the disagreement) would be the forum used to settle any dispute that the partners could not resolve without an external agent.

VII. Termination of the SLSA

The agreement cannot be terminated in its first three years of operation, this has been agreed to ensure that there is a period of certainty to build the partnership. Thereafter a council can choose to withdraw by giving no less than one year's notice expiring at the end of a financial year. The partners will agree an exit plan, with the primary objective of delivering uninterrupted legal services to those relying on OPL for those services. Members should be aware that in most circumstances the exiting council would be expected to bear the costs incurred by their exit from the partnership.

CONSULTATION:

The SLSA has been developed through close collaboration of key colleagues within Brighton & Hove City Council, East Sussex County Council, Surrey County Council and West Sussex County Council

- Graham Friday – Interim OPL Finance Lead
- Finance workstream - Sue Chapman and Peter Francis (BHCC), Andy Fowler (ESCC), Andy Tink and Claire Walker (SCC) and Stuart Elsdon (WSCC).
- HR– Sarah Mainwaring (ESCC), Sue Moorman (BHCC), Julie Smythe (SCC) and Tim Ratledge (WSCC - to be consulted).
- OPL Project Board
 - Sarah Baker – SCC Legal Services Manager
 - Adrian Conley – BHCC Practice Manager
 - Elizabeth Culbert – BHCC, Head of Law
 - Diane Henshaw – WSCC Principal Solicitor
 - Diane Owens – SCC, Principal Solicitor
 - Richard Grout – ESCC, Legal Services Manager
 - Joanna Hauge – ESCC, Senior Solicitor
 - Michael Jordan – WSCC, Principal Solicitor
 - Natasha Watson – BHCC Principal Lawyer Safeguarding and Litigation
 - Richard Pearce – WSCC, Principal Solicitor
 - Andrea Kilby – OPL Business Development Manager
 - Emma Nash – OPL Project Manager

Legal Implications

The SLSA is a legally binding contract between BHCC, ESCC, SCC and WSCC. The terms of the Agreement formalise the arrangements between the councils for the OPL shared service and provides the legal framework for its operation. The terms of the SLSA have been drafted and agreed by Officers from all four councils.

Equalities and Diversity

Each council has in place equality and diversity policies and in particular the staff management protocol acknowledges the need to uphold the principles of equality and diversity in managing the large and diverse OPL workforce.

WHAT HAPPENS NEXT:

The Budget Schedule and Staff Management Protocol will be finalised for inclusion in the SLSA and the SLSA will be sealed by all four councils to make the terms legally binding upon them.

The OPL Roadmap for 2017, detailing the key milestones is attached as Appendix 1.

Contact Officer:

Diane Owens, SCC Principal Solicitor
Emma Nash, OPL Project Manager

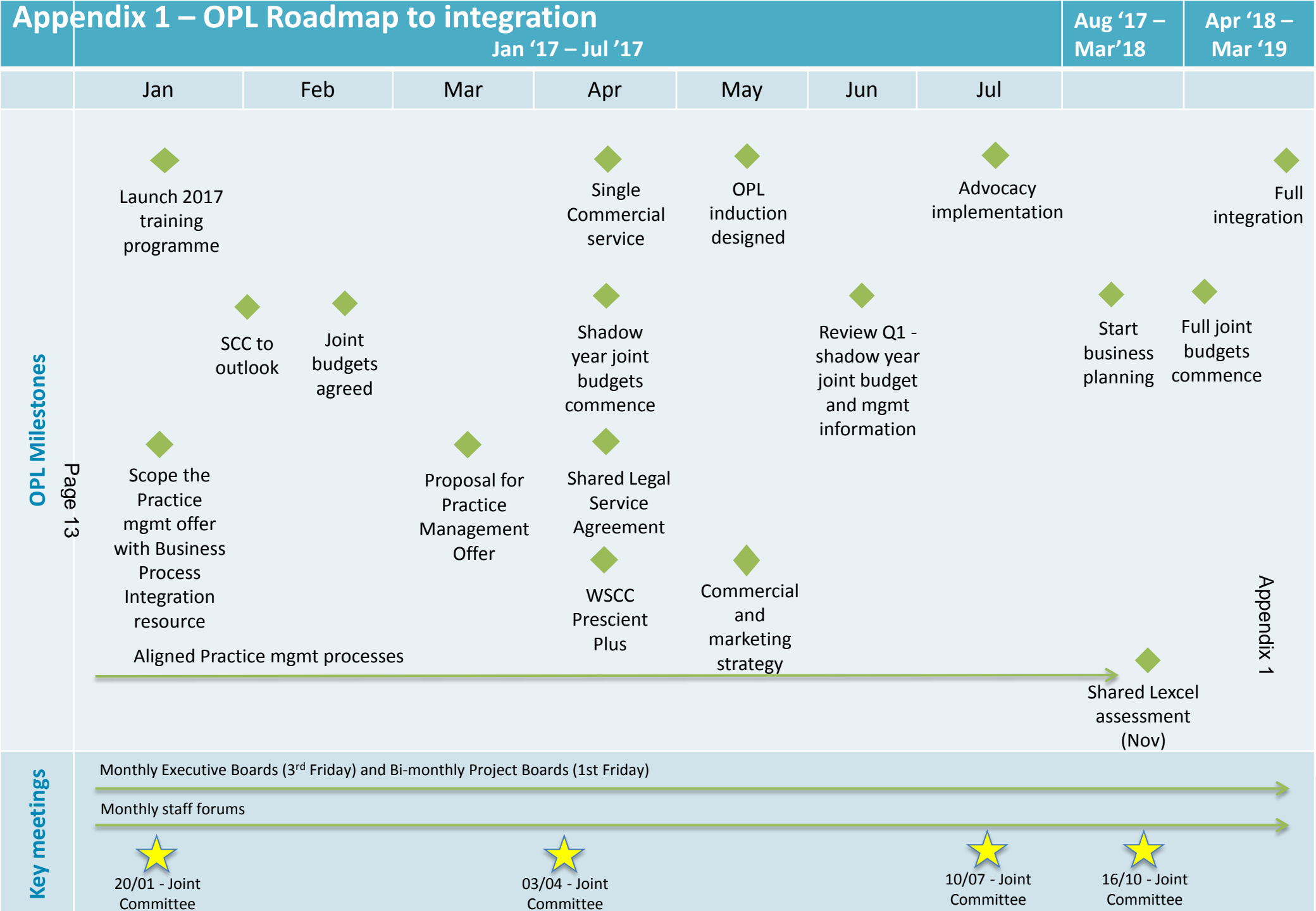
Appendices:

Appendix 1 – OPL Roadmap

Background Papers:

None

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BRIGHTON AND HOVE CITY COUNCIL, EAST SUSSEX COUNTY COUNCIL, SURREY COUNTY COUNCIL AND WEST SUSSEX COUNTY COUNCIL



ORBIS PUBLIC LAW JOINT COMMITTEE

DATE: 20 JANUARY 2017

LEAD OFFICERS: ABRAHAM GHEBRE-GHIORGHIS (EXECUTIVE LEAD OFFICER FOR STRATEGY, GOVERNANCE AND LAW, BHCC),
ANN CHARLTON (DIRECTOR OF LEGAL, DEMOCRATIC AND CULTURAL SERVICES SCC),
PHILIP BAKER (ASSISTANT CHIEF EXECUTIVE ESCC); AND
TONY KERSHAW (DIRECTOR OF LAW, ASSURANCE AND STRATEGY WSCC).

SUBJECT: ORBIS PUBLIC LAW 2017/18 BUDGET PAPER

PURPOSE OF REPORT: To provide details of the Orbis Public Law (OPL) Operating Budget for 2017/18, and to provide details on how the OPL partnership will operate a shadow year for 2017/18.

INTRODUCTION

1. Orbis Public Law (OPL) depends upon true partnership working including the sharing of budgets, savings and resourcing. There are financial considerations to be included within the Inter-Authority Agreement (IAA) in order to set a partnership budget for OPL to share from April 2017.
2. This paper details the OPL operating budget for 2017/18 and outlines how the partnership will operate a shadow year, ahead of full budget integration from 2018/19.

RECOMMENDATIONS:

3. The Joint Committee is asked to:
 - Note the OPL 2017/18 operating budget;
 - Note the associated provisional contribution ratios (ACRs) that will be applicable for the shadow year ; and
 - Note the plans for operating a shadow year in 2017/18, ahead of full budget integration from 2018/19.

REASON FOR RECOMMENDATIONS:

4. The Joint Committee has responsibility for recommending a budget for the OPL partnership. The shadow year will be an opportunity to assess whether the proposed provisional financial arrangements support the achievement of the strategy for the partnership. Activity will be monitored against the proposed contribution ratios and will inform a baseline, which may be used to vary the ACRs from 2018/19, once the budgets are fully defined and integrated.

DETAILS:

5. It is important to recognise that OPL is on the journey to full integration by 2019. Whilst the integration of budgets is planned to be completed for 2018/19, there is the opportunity to operate a shadow year through 2017/18. The purpose for the shadow year is to provide the opportunity to align policies and procedures (both financial and operational) and establish the baseline of data against which the performance of the OPL can be monitored. The shadow year will also provide the opportunity to review decisions and make adjustments to the operating budget and financial principles accordingly.
6. The 2017/18 Orbis Public Law Operating Budget (£9.9m net) is set out below by authority, with each partners' share, or agreed contribution ratio (ACR). A more detailed split of the budget is included in Appendix 1.

Orbis Public Law Finance Baseline - 2017/18					
	BHCC	ESCC	SCC	WSCC	Total OPL OB
	£'000	£'000	£'000	£'000	£'000
Staffing	2,115	1,744	3,314	3,572	10,745
Non Staffing	74	77	138	97	386
Gross Expenditure	2,189	1,821	3,452	3,669	11,131
Total Income	-270	-281	-400	-303	-1,254
Net Expenditure	1,919	1,540	3,052	3,366	9,877
ACR	19%	16%	31%	34%	100%

7. The income included within the OPL Operating Budget, includes that generated by external sources. This includes services provided to local authority maintained schools and academies, the pension fund and other external clients. There is not currently a consistent approach to charging across the Partners and this will need to be reviewed during the shadow year; however this may demonstrate an opportunity for further income generation within OPL.
8. Anomalies across the four partners' existing financial management procedures also include the way that external legal fees and counsel fees are budgeted for, as shown in the table below. The different treatments have meant that it is not possible to include these budgets within OPL at this time. Whilst this is a large area of expenditure, it may be co-managed and efficiencies may be delivered without pooling the budgets at this time.

External Legal Fees and Counsel Fees - 2017/18					
£'000	BHCC	ESCC	SCC	WSCC	Total
Counsel - budgets held in legal	-	-	789	251	1,041
External Fees - held in legal	-	64	39	763	866
Budgets Held in Client Depts.	700	498	-	-	1,198
Total External Legal Fees	700	562	828	1,015	3,105

In addition to those figures above, there is further legal activity and associated expenditure, which is incurred across the Partnership but not yet captured. These issues will be further considered during the shadow year which may lead to proposals to alter the financial principles and arrangements to support the delivery of savings to each authority.

9. Differences such as this, and the way that the ongoing case management system costs are managed (in BHCC and ESCC the budgets are held within legal services, however in SCC and WSCC, the budgets are held by ICT) will be

reviewed and resolved through the shadow year. It is important to both identify and capture these costs as they could form the basis from which efficiency savings may be delivered.

10. Through the shadow year 2017/18, the OPL Operating Budgets will be co-managed in order to deliver efficiencies. The budgets are planned to be monitored as one budget and will be reported quarterly to the Board. More detail on the monitoring and reporting of the OPL budget will be presented to the Joint Committee in April 2017.
11. The share of the net expenditure budget is shown by the Agreed Contribution Ratio (ACR), which will be used to apportion the costs of OPL operations. Approval will be required from each authority if the apportionment of costs differs from the budget during the shadow year. Once fully integrated, OPL will monitor activity levels and reflect the impact of varying demand on the ACR; each authority will pay proportionate to the service they will receive.

CONCLUSION

12. The ACRs demonstrate a fair and equitable split of the partnership expenditure, based on the net expenditure budgets. Activity will be monitored alongside this to form a baseline, which may be used to vary the ACRs from 2018/19, once the budgets are fully integrated.
13. Through the shadow year of 2017/18, the OPL Operating Budgets will be co-managed in order to deliver efficiencies. The budgets are planned to be monitored as one budget and will be reported quarterly to the Board.
14. The shadow year provides the opportunity to evaluate the proposed arrangements to ensure that they support the delivery of the strategy for the partnership.

Contact Officer: Graham Friday – Interim OPL Finance Lead

Consulted With:

OPL

Emma Nash – OPL Project Manager

Andrea Kilby – OPL Business Development Manager

OPL Lead Officers

Abraham Ghebre-Ghiorghis – BHCC Lead

Philip Baker – ESCC Lead

Ann Charlton – SCC Lead

Tony Kershaw – WSCC Lead

Finance Leads

Peter Francis – BHCC Finance

Andy Fowler – ESCC Finance

Claire Walker – SCC Finance

Stuart Elsdon – WSCC Finance

Section 151 Officers

David Kuenssberg – BHCC COO

Phil Hall – ESCC S151

Sheila Little – SCC S151

Katharine Eberhart – WSCC S151

Appendices:

Appendix 1 – Orbis Public Law Operating Budget 2017/18

Sources/ background papers:

None

2017/18 OPL Operating Budget

Orbis Public Law Finance Baseline - 2017/18					
	BHCC	ESCC	SCC	WSCC	Total OPL OB
	£'000	£'000	£'000	£'000	£'000
Staffing	2,115	1,744	3,314	3,572	10,745
Travel & Subsistence	11	14	30	20	75
Professional Memberships	12	9	25	25	71
CPD / Training / Conferences	16	11	18		45
Law Library / Subs / Pubs	31	31	46	38	146
DX / Courier	4	12	19	14	49
Gross Expenditure	2,189	1,821	3,452	3,669	11,131
Total Income	-270	-281	-400	-303	-1,254
Net Expenditure	1,919	1,540	3,052	3,366	9,877
ACR	19%	16%	31%	34%	100%

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**BRIGHTON AND HOVE CITY COUNCIL, EAST
SUSSEX COUNTY COUNCIL, SURREY COUNTY
COUNCIL AND WEST SUSSEX COUNTY
COUNCIL**



ORBIS PUBLIC LAW JOINT COMMITTEE

DATE: 20 JANUARY 2017

**LEAD OFFICERS: ABRAHAM GHEBRE-GHIORGHIS (EXECUTIVE LEAD OFFICER FOR STRATEGY, GOVERNANCE AND LAW, BHCC),
ANN CHARLTON (DIRECTOR OF LEGAL, DEMOCRATIC AND CULTURAL SERVICES, SCC),
PHILIP BAKER (ASSISTANT CHIEF EXECUTIVE, ESCC);
AND
TONY KERSHAW (DIRECTOR OF LAW, ASSURANCE AND STRATEGY, WSCC).**

SUBJECT: REVIEW OF ADVOCACY FOR CHILDCARE PROCEEDINGS

PURPOSE OF REPORT:

To update the Orbis Public Law Joint Committee on progress in carrying out a review of advocacy for childcare proceedings across the Orbis Public Law (OPL) partners.

Introduction

At the last meeting of the Joint Committee members were informed of the increasing volume of work across the four legal services as a result of the growth in child protection activity within Children's Services. Members will recall the graphs showing the impact on both internal resources and spend on external advocacy by the four legal services and were advised that this would be one of the priorities for action across Orbis Public Law (OPL).

During 2015/16 the number of child protection proceedings across the four OPL partners increased by 30% and this increase has continued at a similar rate during the present financial year. This work generates a range of legal activity to manage the collation of evidence and the preparation of a case for hearing. Such cases will develop over several months and many will be complex, requiring numerous court hearings before any final full hearing to resolve the plan for the child.

One solution to managing the costs has been the creation of 'in-house' advocacy teams. Across OPL there are seven full time equivalent lawyers who are employed solely as advocates (i.e. they carry no separate case load). In addition, however, around £1.7m was spent by OPL during 2015/16 on buying in external barristers to represent the local authority at child protection hearings. Legal Services cannot influence the number of cases that are received, nor the fixed costs (such as court fees) that arise, but may be able to reduce the costs of advocacy.

The OPL Executive Board has agreed to review advocacy arrangements across the

whole partnership:

- to reduce OPL expenditure on bought in advocacy for childcare hearings; and
- to examine the feasibility of a joint advocacy unit for OPL.

Recommendations:

It is recommended that the Orbis Public Law Joint Committee note progress being made in carrying out a review of advocacy for childcare proceedings across the Orbis Public Law (OPL) partners.

Reason for Recommendations:

To ensure the Joint Committee is informed about how OPL partners are working together to improve cost effectiveness and efficiency.

Details

1. Each of the four legal teams must operate to similar procedures and processes as these are prescribed by regulation and court rules but some of the application of these processes differ – in how they are done and by whom. Three councils use one county court centre for the work. Surrey uses a different centre. Work is therefore underway to align these arrangements to ensure as much commonality as possible in how the teams work and generate work for advocates.
2. Whilst each team uses in house advocates they tend to use the resource differently – in some cases the advocates carry some case work at times of particular pressure. In some cases the advocates undertake only short cases and in others only the longer or more complex matters. For some teams the advocates operate on a 'call-off' basis, as an external set of chambers might and in others the advocates are more integrated. Work is therefore underway to identify what would be the most beneficial role for a single advocacy team
3. Once the scope of the role is known the work will move to the practical arrangements for managing access to a shared resource so that it brings greatest benefit to OPL without any unfairness across the four councils. Consideration will also need to be given to the relationship the advocates will need to have with their children's services customer (the social work/advocate relationship in sensitive and complex cases can be critical) and with the local courts. Access to social work customers and courts may make a centralised base for a team of advocates impractical. However, there is scope to adopt a common approach to management and clerking. One officer acting as a point of contact could be an efficient way to organise advocate diaries and commitments and provide administrative support to the advocates.
4. The establishment of a single advocacy team will require a carefully considered plan for how it will be established, located and supported, how it will be funded, how it will be deployed and how each team will be able to draw upon it. In terms of the creation of the team the starting point will of course be the process of bringing together the current resources. The project group is also exploring recruitment options which include recruiting externally, offering development opportunities to existing staff wishing to change roles or setting up trainee positions.

5. The other focus of the work is to understand how external advocacy resources are sourced and paid for. In addition to the possibility of reducing cost by joining the commissioning arrangements together it may also be possible to avoid undue competition for external advocates across OPL. Adopting a common approach to the instruction and settlement of advocacy fees should bring a more efficient approach. Officers have reviewed the fee structures each partner authority has with various chambers. Working together gives greater purchasing power and provides an opportunity to negotiate more competitive rates through an OPL framework agreement. An OPL rate has already been successfully negotiated with one chamber which should realise a modest reduction in the overall fee paid by OPL partners. Furthermore, officers are meeting with another big supplier later in January.
6. The interface with these arrangements with the core case work of the child care lawyers is also important. The lawyers in each team will undertake much of the advocacy for the case they handle – perhaps only using an in-house or external advocate for longer hearings or where they are otherwise unavailable. The adoption of a common approach to the allocation of advocacy functions will need to be explored so as to achieve the optimum use of the time of all child care lawyers across OPL.
7. The other significant issue to factor into the work is the arrangement each Council has for the funding of child care legal costs. Whilst the core staff costs, including those for the in house advocates, is included in the shared budget that will operate in shadow form from April 2017, the four councils have different ways of dealing with the costs associated with sourcing external advocates – in two Councils these costs form part of the legal services budget but in the other two those costs are met by the instructing service department (Children’s Services) in slightly different ways. During the shadow budget year it will be necessary to consider options for how these external costs can be managed for the benefit of all four councils. Any savings - whether to legal services within OPL or to the four councils through a different budget line will be equally welcome.
8. The project group will, relying on the broad range of data associated with the use of internal and advocacy resources and projections for future work demands develop an evidence base and business case for an advocacy proposal

Next Steps

9. An advocates group of senior childcare lawyers has been set up to drive the review forward and is taking responsibility for key deliverables and actions. Progress reports are being made to the OPL Executive and Project Boards.
10. By the April the Executive Board should be in a position to make decisions on the establishment of an advocacy resource and related external costs. The aim would be to have an incremental approach to its implementation given the many complexities set out above.

Contact Officer: Sarah Baker, Legal Services Manager, Surrey County Council

Appendices: None

Sources/background papers: None

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BRIGHTON AND HOVE CITY COUNCIL, EAST
SUSSEX COUNTY COUNCIL, SURREY COUNTY
COUNCIL AND WEST SUSSEX COUNTY
COUNCIL



ORBIS PUBLIC LAW JOINT COMMITTEE

DATE: 20 JANUARY 2017

LEAD OFFICERS: ABRAHAM GHEBRE-GHIORGHIS (EXECUTIVE LEAD OFFICER FOR STRATEGY, GOVERNANCE AND LAW, BHCC),
ANN CHARLTON (DIRECTOR OF LEGAL, DEMOCRATIC AND CULTURAL SERVICES, SCC),
PHILIP BAKER (ASSISTANT CHIEF EXECUTIVE, ESCC);
AND
TONY KERSHAW (DIRECTOR OF LAW, ASSURANCE AND STRATEGY, WSCC).

SUBJECT: COMMERCIAL PATHFINDER PROJECT

PURPOSE OF REPORT:

To update the Orbis Public Law Joint Committee on the Integration of the partner authorities' Commercial Law teams.

INTRODUCTION

The aim of the Commercial Pathfinder project is to create a single, resilient and cost effective commercial legal service drawing on and incorporating the existing commercial legal functions of the Orbis Public Law (OPL) partners. Employing approximately 50 full-time equivalent (FTE) staff members collectively, the partnership spends £2.6 million of its Operating Budget (16/17) on commercial areas.

OPL has an opportunity to mark itself apart from its competitors through the adoption of the proposed model for delivery of the shared service. Lessons learnt from this project will inform the integration of other disciplines.

RECOMMENDATIONS:

The Orbis Public Law Joint Committee is asked to consider and note the approach to integrating the commercial areas of law (property, contracts, procurement and major projects).

REASON FOR RECOMMENDATIONS:

To ensure the Joint Committee has oversight of the delivery of the single service.

DETAILS:**APPROACH**

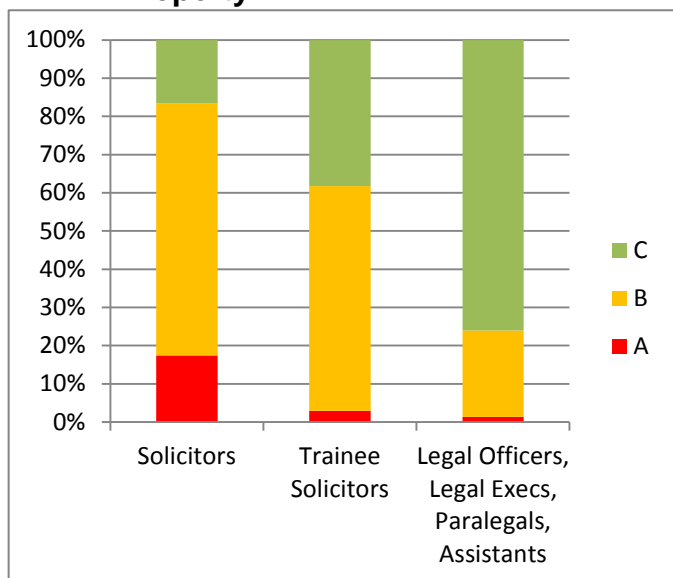
1. The OPL Commercial law teams provide specialist advice and services across the following key areas:
 - i. Property transactions
 - ii. Contracts
 - iii. Procurement
 - iv. Major and specialist projects which typically span a range of legal disciplines.
2. The decision to focus on this area of work was driven by a number of factors:
 - i. OPL possesses a significant pool of talent in a field where it has proven difficult for individual teams to recruit;
 - ii. in recent years legal teams at each authority have seen a significant increase in the volume of technical and complex projects requiring specialist knowledge. This work is expensive to buy-in;
 - iii. commercial work can be delivered from locations at a distance from clients and projects
 - iv. commercial work lends itself to inter-authority collaboration and opportunities to generate additional income; and
 - v. synergies with Orbis Procurement and Property (for BHCC, ESCC and SCC).
3. A steering group and three working groups have been established to lead and deliver the project. The teams approached the Pathfinder through the following activities:
 - i. desktop exercised to evaluate the current state;
 - ii. a series of workshops to capture opportunities for alignment;
 - iii. grading the complexity of work currently being undertaken within the teams;
 - iv. benchmarking activities with other legal shared services;
 - v. analysis of the financial spend;
 - vi. analysis of time recording data where it exists;

- vii. a series of meetings with stakeholders to understand what matters to them.

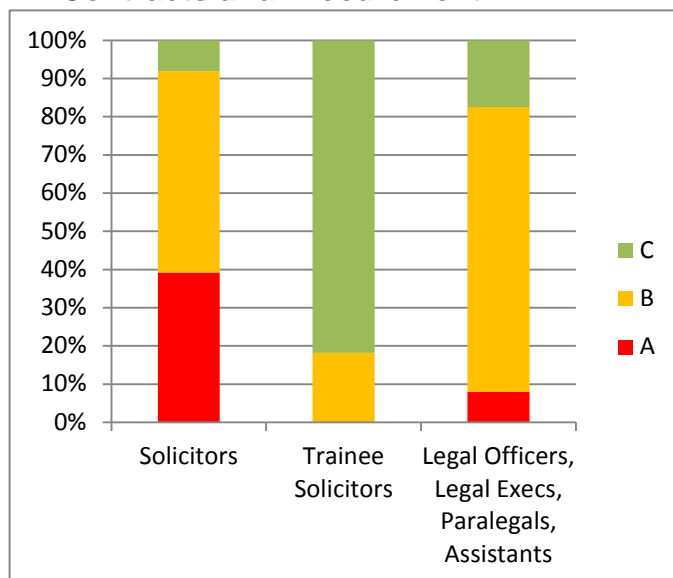
ANALYSIS

4. The differences of how each partner works can be summarised into three categories:
 - i. Stakeholders– Different expectations and service level agreements.
 - ii. Governance – Different constitutions, priorities, values and risk appetite. Some alignment in terms of Contract Standing Orders may be possible but there will continue to be differences here which will need to be managed through clear inductions and strong relationship management.
 - iii. Operational set-up – How legal processes work; OPL can choose to align the way partners work and eliminate these differences. This will increase efficiencies, resilience and provide the necessary capacity to grow.
5. Time recording data, where available showed that:
 - i. colleagues are exceeding their chargeable target hours. This is common across all disciplines;
 - ii. different practices and local variations exist; and
 - iii. a large amount is recorded onto general advice, rather than a specific matter which makes it difficult to analyse what time spent on different matters
6. Open case lists were graded A, B and C depending on the level of complexity and how they are currently dealt with. In general terms:
 - i. Level A – Complex, significant experience required
 - ii. Level B – Business as usual, qualified solicitor
 - iii. Level C – Standard routine work.
7. The following graphs provide a snapshot at how the work is split. There is scope to push some of the work to a lower level within risk profiles and with supervision if required.

Property



Contracts and Procurement



8. OPL stakeholders highly value the in-house legal practices and their shared understanding of corporate objectives and local knowledge. Feeling part of one team, stakeholders highly value legal services to 'keep them safe,' while the public sector transitions to a commercial model for service delivery.
9. OPL are engaged with Orbis colleagues to ensure integration plans reflect the needs of both teams.
10. All partners endeavour to keep as much work as possible in-house. However, increasing volumes and commercial complexity has necessitated the externalisation of some work, particularly property matters. For 16/17 approximately £400k was spent externally. In most cases the costs incurred are funded by instructing departments but Legal Services maintains oversight of the matters.

INTEGRATING THE SERVICE

11. A model to deliver the single service has been proposed and approved by the OPL Executive Board. The steering group and working groups are actively designing and delivering the model through December to April 2017.

Vision - a single, resilient and cost effective commercial legal service	
Theme	Deliverables
Structure (For April 2017)	<ul style="list-style-type: none"> ■ A single commercial team; led by a Head of Commercial Law. ■ An aligned practice management offer. ■ A cultural change, training and personal development

	programme.
Process alignment (To be complete by April 2017)	<ul style="list-style-type: none"> ■ Work undertaken at the lowest level (within risk profiles and with supervision if required). ■ Aligned allocation processes – shared instruction forms and group email inboxes. ■ Consistent case management and time recording / reporting. ■ Shared approach and learning from general advice. ■ Consistent Lexcel confirmation of instruction, reallocation and closure memos. ■ Consistent file review process. ■ Shared inactive file procedure. ■ Aligned risk profiles. ■ Shared templates, terms and conditions. ■ Self-serve offer with Orbis and WSCC procurement. ■ Finance - consistent use and monitoring of level and reason for external support.

LESSONS LEARNT

12. This Pathfinder project was a big challenge for colleagues to come together. As well as having learnt lessons about the Commercial area officers have also taken many ideas in relation to how they work together which will be taken forward when integrating the other disciplines:

- i. have a clear objective and brief;
- ii. create a positive and pro-active working approach to the transition on the part of the teams on the ground. The Steering Group has witnessed first-hand the energy and passion which the teams bring to this process;
- iii. project management support is required to drive progress in a busy and demand led service; and
- iv. there's no right or wrong way; it's about finding the OPL way.

CONCLUSION

13. Once the in house offer is established OPL seeks to expand the remit of the work undertaken in the commercial areas to reduce external legal spend on counsel and solicitors. With an established single service and increased knowledge of OPL's capacity, specialisms and volumes the partnership's services can be marketed to other public sector bodies.

Contact Officers

Steering group:

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Debbie Chantler – SCC Senior Principal Solicitor
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Appendices: None

Sources/background papers: None
