### Rutland CC and Peterborough CC: Legal Services - Report No. 156/2014

#### Three year review of shared services

#### Memorandum of Understanding

May 2014 marks the three year anniversary of the shared legal service between Peterborough City Council (PCC) and Rutland County Council (RCC). Although PCC had been assisting with legal services for some time prior to May 2011, both Councils formally adopted the shared service at that time.

The Memorandum of Understanding set out the arrangements for the shared service which included a review at 3 and 5 years. This report comprises the review of services at end of the third year.

### Changes within the service

Since the shared service began in 2011, there have been a number of changes nationally and within the councils that have affected the operation of the service. Both councils have seen the influx of adult social care and public health work, the creation of the Health & Well-Being Boards and the introduction of the Police and Crime Commissioner amongst other things.

The most significant of the internal changes for Rutland County Council was the restructuring of the corporate client role for the service via the deletion of the post of Head of Corporate Governance from the establishment in April 2013. The post holder was a qualified solicitor with a wealth of experience and the post also included the statutory chief officer role of the Council's Monitoring Officer (MO), being the officer personally charged with ensuring that the Council's decision making is fair and lawful. The post's retention outside of the shared service arrangements meant that day to day general legal and constitutional issues were continued to be dealt with within the Council's normal management and staff structure without the need for referral to Legal Services, including the review of all Cabinet and Council reports as part of the report clearance process. As of June 2013, that review process passed to the current Monitoring Officer, the Council's Director of Resources, alongside a new process for consideration of governance and constitutional matters by the shared Legal Services. The immediate impact, however, is that following that RCC has no on site legal expertise and this has led to the need for consideration of a different approach within the Council and to increased contact with Legal Services to respond to general legal and governance queries and issues.

The Contracts and Procurement Legal Team has seen a lot of change during the period of the agreement and most recently the level of vacancies within the team has increased the volume of work they are passing to the Shared Legal Service. This, combined with the increased work generated by Public Health contracts has meant the level of support required from legal is significantly greater than originally anticipated.

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Other changes within the Resources Directorate at RCC have meant that the main contact in terms of oversight of the shared service has changed twice since 2012, a factor which has contributed to a less formal management of the agreement between the two authorities.

At PCC there have also been significant changes within the structure of the Council and the legal service. Most notable, was the departure of the Solicitor to the Council and the successful appointment of the then Head of Legal, Kim Sawyer, to the new role of Director of Governance. Both the Solicitor to the Council and Head of Legal posts at PCC are now redundant as part of an overall management restructure. To assist the new Director in managing this transition and the various departments that she is now responsible for, an interim Head of Legal and interim Head of Legal and Governance have been appointed. Both interim appointments are well respected within their field and come with a wealth of experience, but nevertheless this has had an impact on the service as a whole.

Additional appointments have recently been made to help support the Contracts and Procurement Legal Team (a permanent Contracts Lawyer and Assistant Lawyer), as well as interim support in the Childcare Team. We are continuing to monitor the workload of all the teams to ensure that we have sufficient resource available.

The last three years have seen a number of changes operationally as well. Two specific events have had an impact on the team. The introduction of a new case management system has radically changed the way in which we work. This has however also had an impact on time recorded (in 2012/13) through the migration from our previous system, time available because of ongoing training needs and our ability to generate retrospective reports as the Licence for our previous system has now expired. We have also moved to a "Thin Client" Citrix environment and are one of the first Council to use Microsoft Office 2013 all of which has required adjustments for staff and a steep learning curve.

The second significant event which took place at the start of this calendar year was the temporary relocation of staff whilst our offices were being made open plan. All staff were moved to alternative locations and then moved back once the work was completed. In total this took around 10 weeks, involved a lot of planning and preparation and caused some disruption to the service.

# Service Level Agreements

The main operational aspects of the shared service were set out under five separate service level agreements (SLA's) agreed between the Legal Services and various Heads of Service within RCC. The SLA's set out the process for reporting the work undertaken, monitoring the time/cost and dealing with any changes or complaints regarding the service.

Although the primary terms were agreed at the outset of the partnership, the first SLA's took almost a year to set up. This is because, for the first time, the agreements aimed to define the

level of expected workloads for the Legal Services team. The SLA's were agreed with the Resources Directorate, Asset Management services, Environment Planning & Transport, People (Stronger Communities, Inclusion & Lifelong Learning) and the People Directorate (Vulnerable People, Vulnerable Children & Customer Care).

In the second year of the shared service, the agreements were negotiated between the senior lawyers in the Legal Services team and the various Heads of Service. The SLA's were reviewed over the period January 2013 to June 2013. The third review of the agreements is due to take place in May 2014.

## Cost

The cost of the shared service was agreed on an hourly rate basis with a single flat hourly rate agreed for all services provided regardless of seniority. This was considered to be the simplest method of charging. The rate includes all on costs and overheads. The estimated number of hours to support Rutland County Council and also keep within the budget limits of the former legal team was agreed at 3,000 hours per year. This was an estimate but for the first two years of the service did prove to accurately reflect the level of service requested. The number of hours to deliver the service is increasing as the service demands change. These are discussed further in this report. The initial hourly rate was also estimated at the outset at a level thought to cover the costs of the service. Following the first year of operation the rate was increased marginally to account for actual cost but has been maintained without any increase since 2012. Please see the table on the following page.

Year	Legal Cost per Hour	Q1	Q2	Q3	Q4	TOTAL	equivalent chargeable hours
2011/12	£70	£38,791	£57,393	£59,822	£46,823	£202,829	2897.55
2012/13	£80	£62,704	£53,408	£123	£123,000		2988.90
2013/14	£80	£58,834	£64,700	£67,484	£57,855	£248,874	3110.92

Peterborough City Council agreed to act as host for the Service, transferring 3 of the then RCC legal posts into the team and providing all support functions for the service: ICT, library services, case management software, business administrative support and practice management. These costs are all met through the hourly rate cost, together with training and practicing certificate renewals.

The Legal Service at Peterborough holds the Law Society Lexcel accreditation, which recognises excellence in practice management, and has been re-accredited on several successive occasions. It invested in a new case management system in 2012 and work is still underway to implement all aspects of this system to provide ongoing efficiencies in service. An example of this is shown in the monthly reporting which shows certain work formerly carried out by lawyers now carried out by business support officers at zero charge (as work at this

level is included in the lawyer's hourly rate). This shows one way in which our service improvements have allowed us to reduce the overall cost to Rutland. The total cost of Legal Services to Rutland is less than it's Legal salary budget in 2010/11, which we understood to be approximately £260k, without accounting for the external spend in 2010/11 on Legal services such as Childcare and the operational costs of running the service. Therefore, this represents a saving of £11k this year without accounting for any additional operating costs, inflation or salary increments.

The migration to a new case management system did cause some disruption in the last half of 2012/13. It was agreed that a balancing amount was invoiced under the SLA to reach the 3000 hours, as we encountered issues with reporting and time recording across the two systems. Indications were that the number of hours would have been at least equal to or greater that the preceding two quarters in any event.

A previous report to the Scrutiny Committee (Corporate) (report number 82/2012), demonstrated that the hourly rate compared favourably when matched to legal services purchased externally. It also sought to illustrate the qualitative benefits of the shared service arrangement.

The Shared Service provides legal support in a number of areas where Rutland had previously sought external expertise at a much higher cost. The average hourly rate for Lawyers in private practice was in the region of £125-150, based on benchmarking data that was obtained in 2012. It was considered at the time that this was a conservative estimate and is now likely to be considerably more.

Our costs do not include any element of profit and are calculated to cover the cost of the Service. Costs are largely controlled through an agreed list of instructing officers which was reviewed in January 2013.

### Reporting

The case management system produces monthly reports that are sent to the Heads of Service leading each SLA detailing the work currently ongoing for that area, the time spent on the case for that month and the corresponding cost. The Practice Manager sends these reports to each of the Heads of Service as follows;

RCC Places 1	V Brambini (now Paul Philipson)	Monthly
RRC Places 2	D Brown	Monthly
RCC Resources	D Mogg & D Baker	Monthly
	G Rhodes White, M Naylor, W	
RCC Vulnerable Adults	Poynton & J Haigh	Monthly
	G Rhodes White, M Naylor, W	
RCC Life Long learning	Poynton & J Haigh	Monthly
RCC Deputy Mon.	D Mogg & D Baker	Monthly

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RCC Overview	D Mogg & D Baker	Monthly
RCC Quarterly Time Reports RCC Quarterly Disbursement Reports	as above	Quarterly
	D Mogg & D Baker	Quarterly

In addition to this form of reporting, we maintain the productivity reports which help manage the workloads of staff within the department. We work on the basis that 75% of time in the office should be productive, chargeable time. This allows for activities such as internal meetings, training and general non-chargeable time. An example and further information can be found in Appendix 1.

### Quality of Service

For the most part lawyers continue to have regular meetings with relevant persons in their areas of practice. In two particular areas this has not been happening regularly: Inclusion (Adult social care) and contracts. These areas have become two particular pinch points for legal services over the past twelve months, because of an increase in instructions and complexity from both PCC and RCC. The level of instructions in these areas continues to rise at a pace where lawyers are unable to deal with the volume of instructions. In some cases therefore instructing officers are given the opportunity to instruct external solicitors outside of the shared service agreement or to wait until there is availability within the team. A capacity bid was made for additional contracts lawyers in the recent budget round which was approved and the posts were filled in April. This has not increased the Legal Services' costs to Rutland Council.

In addition adult social care lawyers have proven to be a difficult area to recruit to and therefore the Council has put in place an arrangement through EM Lawshare to support the in house team for both capacity and expertise.

Both Councils, however, also continue to experience an increasing service delivery with public health recently joining the additional services. This has placed further demands on the Contracts Team as public health services tend to be commissioned rather than delivered directly.

The following pages report specific development from the shared Legal Services team in each area of their specialism:

### • Contracts

The primary instructing officers are those of the Welland Partnership.

Recent successful projects include re-writing the Contract Regulations within the Constitution together with the Welland Partnership and the Rutland highway services

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contract with Lafarge Tarmac. Lawyers attended Rutland Council in December 2013 to assist in the issue the contract to Lafarge Tarmac.

Legal Services has seen a recent spike (since December 2013) in the number of instructions we receive from Rutland Council. Since December 2013, we receive on average between 2-3 new instructions per week from RCC, which is in part due to the vacancies within the team at RCC and the level of current expertise. Despite the increase in work levels PCC have been attempting to help "upskill" the procurement team and ensure that they are kept up to date with guidance and changing legislation. For example, procurement officers from Rutland Council recently attended a free seminar on the new EU procurement directive on 10<sup>th</sup> February 2014 at the Peterborough Town Hall. The seminar was organised by Peterborough Council and was presented by Pinsent Masons. We organised a TUPE training seminar for PCC and RCC officers, which was held on 28<sup>th</sup> April at the Town Hall. In addition, we receive lots of updates from PLC and other law firms which are in turn sent to Tom. We send updates that we think would be relevant to Tom's team, such as:

- Public Sector Newsletter from either Pinsent Masons or Browne Jacobson.
  For example one recently had news about recent changes to EU procurement rules and TUPE regs;
- New Transparency Code update sent in January 2014. Officers have been working on the implications of the code;
- Recent changes to Judicial Review proceedings;
- Implications of the Public Services (Social Value) Act 2012.

The SLA's do not cater for the current level of instruction and whilst the contracts team has increased its lawyers the forthcoming SLA discussions will centre around the expectations for the contracts team over the coming year.

# • Vulnerable children

Considerable work has been undertaken with the Courts both in Peterborough and in Leicester to develop new practices and procedures to enable social workers to deliver court proceedings to the Revised Public Law Outline (PLO) requirements and within the 26 week time limit. The Senior Lawyer and the Head of Legal have met with the Judges at both Courts to discuss measures for delivering cases efficiently. As a result all cases have moved to Peterborough, where they are dealt with more quickly and most cost effectively.

The Head of Service has been asked to join the Local Family Justice Board meetings, and is invited to the Court Users Group meetings. When the Head of Service cannot attend notes of the meeting are sent following the meeting. In addition, PCC runs regular training events for social workers, some of which are delivered by the child protection lawyers.

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RCC social workers are invited to all training events.

We have joined RCC into our coverage of Operation Appleton by Counsel, and costs are shared between Peterborough, Rutland and Lincolnshire CC. Recently the senior lawyer has joined Rutland into a trial between various Authorities for providing legal advice to Independent Reviewing Officers.

In addition to regular communication between the senior lawyer and head of service, one childcare lawyer a month will sit at RCC in addition to attending Legal Planning Meetings and other meetings as required.

### • Places: Environment Planning and Transport

The Planning and Highways team have supported this service area and have been involved in several key matters that they have helped to successfully resolve. This includes a long standing planning breach that the legal team managed to negotiate in such a way that a prosecution was avoided. There have also been a few cases of breach of building regulations where public safety was at risk; where the team have advised and successfully prosecuted.

They are now seeking to work with officers to resolve long-standing rights of way and highway issues. There is also a longstanding building regulation issue they are working on which involves assessment of evidence and providing advice regarding options available to pursue enforcement. As well as this the team are working with officers to secure the services of Counsel in order to resolve a longstanding planning appeal, inquiry, judicial review and compensation claim.

They are providing continual advice on the Local Development Framework; particularly supporting Site Allocation Development Plan Documents; as well as offering regular support to Development Control and the Licensing Committee.

The team have been involved in the Barleythorpe and Oakham North projects and have recently completed s106 planning agreements and s38 highway agreements to support these new developments; as well as completing the same for a range of rural exception sites for affordable housing.

In order to streamline certain processes, the team are currently working on new templates to ease the process of regular work types; particularly planning and highway agreements.

### • Property

The team has been successful in the completion of the purchase of HMP Ashwell from the Secretary of State for Justice for the purposes of using the site as a Business Park. Together with the ongoing lease work for the buildings at the Oakham Enterprise Park . . .

(formally HMP Ashwell) and advice to James Frieland. At the last SLA meeting with Victoria Brambini and Dave Brown, Victoria passed on James' thanks for the assistance given. We have also received a number of completed "End of Matter Review forms" that have been marked as "Excellent".

We are receiving more Deferred Payment Agreements from Rutland, which we are turning these round quickly. We have been assisting with the Academy Transfers and Rutland have been happy with the advice provided. We have also been providing a lot of general advice and assistance and dealing with sales of Ashwell Depot and Barleythorpe Hall.

A senior Lawyer also works from Rutland on the 2<sup>nd</sup> Tuesday of each month.

### Resources

As noted above, PCC has recently undertaken a Senior Management restructure in which the Head of the Legal Service was promoted to Director of Governance. The delivery of the corporate governance role at RCC was initially picked up on an interim basis by a temporary officer based at RCC but has since been delegated to others; namely the senior lawyers, the interim Head of Legal & Governance, Mr Philip McCourt, and the interim Head of Legal, Mr Michael Rowan. Mr Rowan's role is to ensure that the appropriate management resources are in place to deliver an effective legal service.

As well as link work between PCC and RCC, Mr McCourt separately provides direct support to RCC for approximately one day a week under an associated contract under the Legal Service practice arrangements. This is to provide direct support on monitoring officer type issues and to provide senior legal advice and governance assistance. This has expanded the service to the Council.

Training has been arranged on the new EU Procurement Directives and Returning Officer and Elections.

The Director of Resources has been provided with a licence to the Legal Services' online law library to assist in her Monitoring Officer role.

### • Vulnerable People

The Adult Social Care, Education, Health and Litigation team work within this area. Between the team they deal with a wide variety of matters.

Toby deals with Non-School Attendance and related advice. She currently has three ongoing cases.

For Adult Social Care matters, Gurvinder is specifically dealing with the following: Ordinary

Residence disputes, Responsible Commissioner disputes, Revocation of Power of Attorney, Deputyship matters, disputes relating to care home fees. FOI/DPA, Deferred payments. Michelle also deals with a number of instructions including a few probate related matters which have been coming in recently and general advice.

For Education matters, a lawyer is specifically dealing with Special Educational Needs cases (although there are none live at present), transport advice and issues around transport policy, school admissions, advice around reduction in PAN via consultation period. With regard to School Appeal matters, legal officers undertake clerking of admission appeals, and to date, one transport appeal.

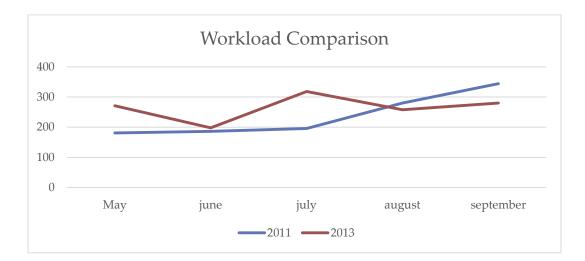
In Litigation, the team are dealing with around 10 benefit fraud cases and ad hoc prosecutions such as health and safety and animal cruelty. They also issue general advice relating to licensing (taxi and alcohol).

### • The Team as a whole

Following a meeting between Debbie Mogg, Diane Baker and Kim Sawyer on 3<sup>rd</sup> March 2014, a number of service issues were identified that affected the team as a whole. The discussion focused on the performance and perception of the service, which resulted in the issues raised together leading to actions that have or will be taken to address them.

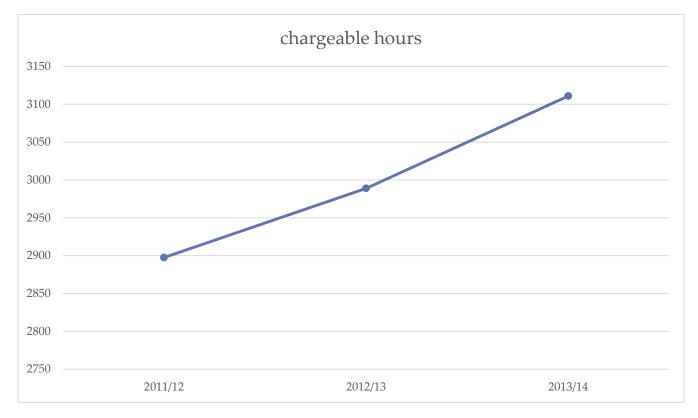
### Workload comparison

The level of work has increased across the service. Using the data obtained from the RCC Senior Management Team presentation dated 12<sup>th</sup> December 2011, the change in recorded hours can be seen below:



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This graph shows a total increase in recorded hours from 1187 in 2011 to 1325 for the same period in 2013. This is an increase of 138 hours over the five month comparison period. We are also aware that not all time was recorded for some periods through 2013, due to the transition to our new Case Management System.

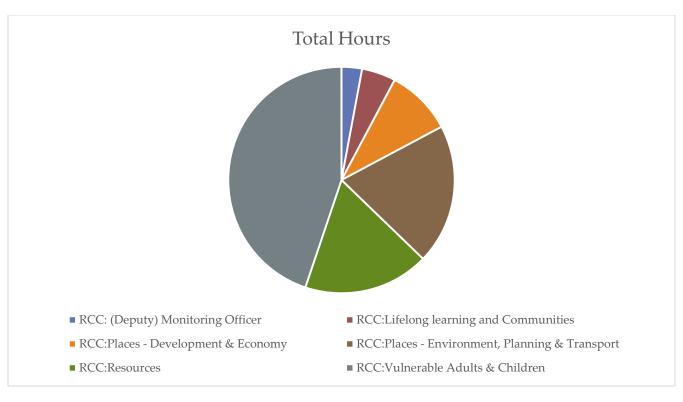


On the following page is a graph that plots the increase in instructions since 2011.

The total usage for 2013/14 by department can be seen in the pie chart and table on the following page.

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Client	Total Hours
RCC: (Deputy) Monitoring Officer	96
RCC:Lifelong learning and Communities	160
RCC:Places - Development & Economy	311
RCC:Places - Environment, Planning & Transport	660
RCC:Resources	592
RCC:Vulnerable Adults & Children	1,478

### The Future

Following the meeting in March between the two Councils, both parties have agreed to defer consideration of the break period set at 3 years until May 2015. This will allow both parties to work together to ensure the clarity of the service objectives and identify what steps need to be taken to ensure the development of the shared service.

The departure of the Head of Corporate Governance has meant that RCC no longer have an in house lawyer that can critically assess the advice provided and act as an "intelligent client". This is something that has been recognised as a potential governance weakness and consideration is ongoing as to how this may be addressed going forward, including the current use of the part time contract with Mr McCourt via the PCC practice. RCC have also opted out of the shared service in relation to certain aspects of employment law advice, which we are assured is not as a result of any reflection on cost or quality of legal advice but rather of legal

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advice being captured within an overall wider human resources support contract entered into by RCC.

PCC is hoping to restructure the newly formed Governance Directorate over the summer months. This will include the proposal to create a conjoined Legal and Governance Service to provide a settled service supported by a single Assistant Director and appropriate staffing structure. The restructure will also create a new Practice Management and Performance Team, which will have a much wider role within the City Council and should be able to provide more detailed reporting for both PCC and RCC.

Work is ongoing on our Case Management System and we are looking at reporting solutions that will allow us to extract more data from the system. We are also putting in place direct project resources to help develop the workflows that we currently have in place and help us to create new ones. This appointment will be before the end of this Calendar year.

The Shared Legal Service has moved away from sending out file completion questionnaires as a means of providing feedback on client satisfaction, at least in the interim, to review how this might produce better outcomes. It is intended that more qualitative data should come forward from the meetings between Senior Lawyers and their Instructing Officers, which should assist the learning and improvement process for both of them to a greater extent.

There is currently a risk management reporting process, established in a way that is Lexcel compliant for handling normal and exceptional risks. This is also a source of information which is under review, with the intention that there could be greater use made of this internal information and how it might be fed back into the two authorities as a briefing register in a more useful way for the organisation and 'central client'.

We are now settled into our new offices following the moves and are working towards a "Paperlite" environment.

Over the course of the coming year both Councils will be working together to ensure that the service objectives are being met and that the issues raised in our recent discussions are addressed and rectified where required. The service will be reviewed at regular intervals by the Senior Lawyers, in conjunction the Heads of Service at Rutland. At the end of the year a full assessment will take place and a decision then made as to whether the shared arrangement remains beneficial to both parties.

Going forward, active consideration is being given to creating a new shared service to also include several of the district councils around Cambridgeshire in order to control future costs and reduce risk of loss of access to essential and appropriate skills. The business model being discussed includes lawyers remaining largely in situ but managed and working to the shared service via a common procedures and case management system; overheads will be defined or excluded and services provided on an agreed rate leading to a demand management model;

central governance and client management to be provided via member councils directly employing their senior lawyer (monitoring officer role) in place, either directly or shared as required. Whether RCC would wish to continue as is, join a revised shared service in a common basis or something else is a matter to be considered at the May 2015 break point or otherwise in due course.

### Appendix 1

Example of the internal Productivity Reporting

Chargeable Time		RECORDED HOURS						Cumulative Total RECORDED HOURS								Cumulative Total			
		1			2		3	Q1		4		5		6		Q2			
Post	Target Hours	April	%	May	%	June	%	Hours	%	July	%	August	%	Sept	%	Hours	%		
Senior Child Protection Lawyer	90	40	44%	81	90%	66	73%	187	69%	66	73%	87	97%	69	77%	222	82%		
Child Protection Lawyer	112.5	159	141%	124	110%	147	131%	430	127%	119	106%	77	68%	150	133%	346	103%		
Child Protection Lawyer	112.5	50	44%	94	84%	93	83%	237	70%	92	82%		0%		0%	92	27%		
Child Protection Lawyer (Temp)	112.5	127	113%	115	102%	121	108%	363	108%	145	129%	115	102%	131	116%	391	116%		
Legal Officer	112.5	130	116%	118	105%	47	42%	295	87%	119	106%	136	121%	104	92%	359	106%		
Legal Officer	112.5	130	116%	142	126%	129	115%	401	119%	140	124%	124	110%	61	54%	325	96%		
Legal Officer	112.5	100	89%	95	84%	96	85%	291	86%	78	69%	77	68%	66	59%	221	65%		
	AVERAGE		95%		100%		91%		95%		98%		81%		76%		85%		
Productivity				ACTUAL	HOURS			Cumulati	ve Total			ACTUAI	HOURS			Cumulativ	<mark>e Total</mark>		
		1	L	2		:	3	Q1		4		5		6		Q2			
Post		April	%	May	%	June	%	Hours	%	July	%	August	%	Sept	%	Hours	%		
Senior Child Protection Lawyer		73	55%	163	50%	148	45%	384	49%	151	44%	148	59%	105	66%	404	55%		
Child Protection Lawyer		163	98%	125	99%	152	97%	440	98%	163	73%	80	96%	163	92%	406	85%		
Child Protection Lawyer		56	89%	95	99%	107	87%	258	92%	99	93%	•	#DIV/0!	•	#DIV/0!	99	93%		
Child Protection Lawyer (Temp)		145	88%	101	114%	143	85%	389	93%	180	81%	112	103%	155	85%	447	87%		
Legal Officer		167	78%	159	74%	64	73%	390	76%	176	68%	160	85%	116	90%	452	79%		
Legal Officer		144	90%	144	99%	145	89%	433	93%	163	86%	152	82%	93	66%	408	80%		
Legal Officer		134	75%	157	61%	144	67%	435	67%	126	62%	122	63%	104	63%	352	63%		
	AVERAGE		82%		85%		77%		81%		72%		#DIV/0!		#DIV/0!		77%		

In order to better manage the team, we introduced a productivity indicator. This looks at the time spent in the office from flexi-time records and compares it against chargeable time. This allows us to see how productive our lawyers are on a monthly basis. We set a benchmark of 75%, as we felt that this would be achievable, but still challenging. Chargeable time only includes time spent on specific cases and would not include training, team meetings, 1:2:1 and other activities. Senior Lawyers have a reduced target to account for management duties and the target for Part time staff is pro rata.