

SHARED LEGAL SERVICE ARRANGEMENT

between

WARWICKSHIRE COUNTY COUNCIL

- and -

WARWICK DISTRICT COUNCIL

AGREEMENT FOR THE PROVISION OF LEGAL SERVICES

THIS AGREEMENT is made the day of JANUARY 2013

BETWEEN:

- (1) WARWICKSHIRE COUNTY COUNCIL of Shire Hall, Warwick, Warwickshire CV34 4RR ("WCC") and
- (2) WARWICK DISTRICT COUNCIL of Riverside House, Milverton Hill, Leamington Spa, CV32 5HZ ("WDC")

WHEREAS

- (A) WCC and WDC entered into a shared legal service arrangement on [date] February 2010 for a period of three years ending on 31st March 2013
- (B) WCC and WDC wish to extend the arrangement such that WCC will continue to be WDC's provider of choice with regards to WDC's requirements for legal advice from 1st April 2013.
- (C) The authority for extending the arrangement in relation to WDC is a decision made by the WDC Executive on [date] January 2013 and in relation to WCC is a decision of the Strategic Director of Resources pursuant to his delegated powers contained in Part 2, Section 10 and Part 3 Section 3 of the WCC Constitution.
- (D) This Agreement is intended to set out the basis of the arrangement for this inter-authority collaboration in relation to the provision of legal services.

It is hereby agreed as follows;

1. Purpose of Collaborative Arrangement

1. The objectives of the arrangement are:
 - 1.1 to provide a cost effective and quality legal service to both Councils through an in-house legal team;
 - 1.2 to improve the resilience of the service by pooling resources and providing a combined staffing resource which can provide legal advice across a wide range of legal disciplines and is able to withstand peaks and troughs in demand for legal services
 - 1.3 to jointly strive for efficiency gains through less reliance on costly external providers and agency staff;
 - 1.4 to expand and develop the legal specialism of WCC in-house lawyers to the benefit of both Councils through access to a broad skills base;
 - 1.5 to promote and enhance the career development opportunities for staff which will benefit recruitment and retention of staff;

- 1.6 to strive for efficiency gains shared equitably between the Councils, achieved through economies of scale, reduction in duplication and streamlined process and procedures.

2. Definitions and interpretation

- 2.1 In this Agreement the following terms shall have the following meanings;

“Commencement Date”: 1st April 2013;

“Intellectual Property”: means all intellectual and proprietary rights including without limitation all worldwide copyrights, data base rights, patents, patent rights, trade marks or names and service marks (whether or not registered) goodwill, registered designs, design rights, domain names, moral rights, rights of invention, processes, know how, trade or business secrets, confidential information or any process and any other similar rights;

“the Manager” means the officer nominated from time to time by WCC for the purposes of this Agreement

“Monitoring Officer” means the person designated by a local authority as its monitoring officer in accordance with section 5 of the Local Government and Housing Act 1989;

“Notice”: means notice complying with the terms of clauses 17.7 and 17.8;

“Payments”: means the sums paid by WDC pursuant to clauses 6.2 and 6.3 of this Agreement and the arrangements set out in Schedule 2;

“Services”: means the services specified in Schedule 1;

“Term”: means the period of [5 years] from the Commencement Date;

“TUPE Regulations” shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time;

“This Agreement”, “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Agreement and include all Schedules; and

“WDC’s Client Officer” means the officer nominated from time to time by WDC for the purposes of clause 8.

3. Provision of Services

- 3.1 WDC and WCC agree that WCC will provide the Services for the Term in return for the Payments and in compliance with the terms and conditions set out in this Agreement.

- 3.2 Subject to the provisions of Schedule 5 (Conflicts Protocol) WDC agrees that this shared legal service arrangement will be used to meet all of its requirements for legal services.

- 3.3 Subject to the provisions of clauses 5.2, 5.3 and 6.6.1 the Services will be provided out of WCC’s business premises at Shire Hall, Warwick.

4. Duration

- 4.1 This Agreement shall commence on the Commencement Date and shall continue for the Term unless terminated by either party pursuant to clause 15.
- 4.2 At the end of the Term this Agreement may be extended on terms and conditions acceptable to both parties.

5. WCC's Obligations

WCC's obligations are as follows.

The Services

- 5.1 To provide the Services with all reasonable skill and care, and in compliance with;
- 5.1.1 All relevant statutory rules, procedures and codes of practice
 - 5.1.2 All relevant WDC policies, rules, standing orders, procedures and standards
 - 5.1.3 The Quality Standards specified in Schedule 3
 - 5.1.4 The terms and conditions of this Agreement
- 5.2 To attend such member and officer meetings at WDC's business premises as reasonably requested by WDC, and at other premises where such attendance is reasonably necessary in connection with the provision of the Services. For the avoidance of doubt it is envisaged that there will be a WCC legal presence at WDC meetings of the Planning Committee, the Regulatory Committee, the Licensing Committee and licensing panels. Attendance at other meetings (including Council, the Executive, other committees, sub-committees, panels and officer meetings) and legal advice required by the Monitoring Officer (such as clearing committee reports) will be agreed from time to time as necessary.
- 5.3 If requested by WDC and subject to the provisions of clause 6.6.1 to make available a fee earner at an appropriate level to work from WDC's business premises on a minimum of one day per week (or a combination of two half days) to undertake legal work on behalf of WDC, such days to be agreed by the parties.
- 5.4 To provide WDC on a monthly basis with a detailed statement of work undertaken and to use this as a mechanism for reimbursement of WCC's costs and charges incurred in the provision of the Services in accordance with Schedule 2. Throughout the period of the Agreement WCC and WDC will keep the budget provision under review and agree joint steps to manage legal expenditure where it appears that it is likely to exceed the available budget.

Confidential Information

- 5.5 Not at any time during or after the Term without the prior written consent of WDC to divulge or allow to be divulged to any person (including any officer of WCC not involved in the provision of the Services or any elected member of WCC) any confidential information acquired by WCC in the course of provision of the Services if such information relates to the business or affairs of WDC or of any legal or natural person in relation to which or to whom confidential information is held by WDC. For the avoidance of doubt WCC's Strategic Director of Resources and WCC's Head of Law and Governance and such legal officers/ advisors employed within that Division of WCC are deemed to be involved in the provision of the Services.

- 5.6 Without prejudice to the foregoing WCC may divulge or allow to be divulged such information (whether confidential or otherwise) to any locum or private sector contracted staff or other such temporary staff engaged to provide the Services without prior agreement of WDC.

Accommodation

- 5.7 Subject to the provisions of clause 6.6.1 to provide at its own cost its own office accommodation, administration and support services as may be necessary for the provision of the Services.

Insurance

- 5.8 To ensure that adequate insurance cover is effected and maintained in respect of any WDC property held by it for the purposes of this Agreement, employers liability, employee liability, public liability and liability for professional negligence.

Delegation

- 5.9 Not to delegate any duties or obligations arising under this Agreement otherwise than may be expressly permitted under the terms of this Agreement.

6. WDC's Obligations

- 6.1 The financing of the shared service will be through a coordinated budget arrangement agreed between the parties. For the financial year 2013/14 WDC will make available a budget of at least [£] for the provision of Services. For subsequent years the annual budget provision will be the subject of review and agreement by both parties in the November preceding each subsequent financial year with final budget confirmation taking place in January each year.

- 6.2 To reimburse WCC for the costs of the Services provided based on the hourly rates set out in Schedule 2. For the avoidance of doubt the following costs are not included in the annual budget provision or in the hourly rate charges;

- 6.2.1 Counsel's fees, court/ panel/ Tribunal fees, expert and witness fees and other related disbursements
- 6.2.2 External solicitors' costs where these are deemed necessary by agreement between the parties
- 6.2.3 Special fees relating to the production of documents (eg cost of reports or court reporters' transcription fees)
- 6.2.4 Tracing, service and enforcement costs (whether successful or not);
- 6.2.5 Land registry fees
- 6.2.6 Search fees
- 6.2.7 Other third party fees
- 6.2.8 All taxes and duties
- 6.2.9 Costs connected with the delivery of documents where ordinary postal, DX or electronic services are not used
- 6.2.10 Travel and subsistence expenses where travel is outside Warwickshire or Coventry
- 6.2.11 Attendance at any seminars or other events required by WDC

- 6.3 To make the Payments within 30 days of receipt of the monthly statement from WCC and in accordance with the arrangements set out in Schedule 2. Any query relating to any item on a monthly statement shall be raised within 30 days of receipt, and if sustained shall result in a retrospective amendment in the following monthly statement
- 6.4 WDC acknowledges that the proper provision of the Services depends on
- 6.4.1 the supply of prompt, complete and clear instructions from WDC to WCC; and
 - 6.4.2 full co-operation from relevant elected members and officers within WDC; and
 - 6.4.3 the ability of WCC to identify recognised and authorised channels of communication within WDC from whom instructions can be taken.
- WDC undertakes to procure that such instructions and co-operation are forthcoming and that the channels of communication, including authorised officers, are notified to WCC including any changes thereto.
- 6.5 To act in accordance with the quality standards specified in Schedule 4. Should WDC not comply with the quality standards set out WDC acknowledges that this may affect the delivery of the Services
- 6.6 To make arrangements from the Commencement Date for the following;
- 6.6.1 To make available at WDC premises such office space including a suitably equipped work station and ICT facilities to enable WCC staff to provide the Services from WDC offices at such times and on such frequency as agreed between the parties;
 - 6.6.2 To ensure that adequate insurance cover is effected and maintained including but not limited to employers liability employee liability and public liability for the purposes of clause 6.6.1 above
 - 6.6.3 To allow WCC staff access to all relevant assets, records (including those belonging to third parties subject to WDC having lawful authority to do so), documents, correspondence, electronic files, software and other systems as may be necessary for the provision of the Services
 - 6.6.4 To allow WCC staff access to WDC's business premises at reasonable times for the provision of the Services

7. Management of Services

- 7.1 The provision of the Services under this Agreement will be managed by the Manager. The Manager will act as a liaison and point of daily contact with WDC.
- 7.2 The Manager shall deal with the day-to-day management of the Services which shall include:
- 7.2.1 recruitment of staff;
 - 7.2.2 allocation of work matters to appropriate staff
 - 7.2.3 monitoring staff performance;
 - 7.2.4 identification of staff training needs;
 - 7.2.5 receiving and evaluating customer satisfaction;
 - 7.2.6 provision of such monitoring reports as agreed by the parties to WDC (including financial information and any agreed KPIs);

8. Joint Review Arrangements

- 8.1 WCC and WDC agree that the shared legal service arrangement will be the subject of joint reviews during the Term at intervals to be agreed.

- 8.2 The Manager and WDC's Client Officer shall meet not less than quarterly to discuss the operating arrangements for and maintain an overview of the shared legal service in order that joint strategies can be agreed for the future provision of the Services.
- 8.3 The Manager and WDC's Client Officer will meet on a half yearly basis to review the quality, cost, accuracy and timeliness of the Services provided and to agree any changes to the delivery of the Services. Such meeting may be attended by such other persons as either party may wish
- 8.4 The Manager and WDC's Client Officer will meet in the November preceding each financial year to consider the annual budget provision for the following financial year and ways in which efficiencies and/or savings can be made. Such meeting may be attended by such other persons as either party may wish

9. Lexcel

- 9.1. WCC shall use all reasonable endeavours to preserve the Law Society's Lexcel accreditation which it has.

10. Indemnities

- 10.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by the Supply of Goods and Services Act 1982.
- 10.2 WCC shall indemnify and keep indemnified WDC against injury (including death) to any persons or loss of or damage to any property which may arise out of the default or negligence of WCC, any contractor or their respective employees, agents, and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto arising from the provision of the Services.
- 10.3 WDC shall indemnify and keep indemnified WCC against injury (including death) to any persons or loss of or damage to any property which may arise out of the default or negligence of WDC, any contractor or their respective employees, agents, and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto arising from the provision of the Services.
- 10.4 Subject to Clauses 10.2 and 10.3, neither WCC nor WDC (nor their respective members, employees and contractors) shall have any liability to the other for any indirect or consequential losses of any kind (including loss of anticipated savings, loss of profit and business and all other indirect damage or injury) arising either from negligence, misrepresentation, or other fault or arising from breach of any contract between WCC and WDC. For the avoidance of doubt, "consequential or indirect loss" does not include the following:
- 10.4.1 Additional operational and administrative costs and expenses; and
- 10.4.2 Expenditure or charges incurred unnecessarily as a result of any default by either party.

11. Information and Confidentiality

- 11.1 Each party will provide all information within its control necessary to enable the other to discharge its obligations under this Agreement and in particular WDC will allow access for WCC and its contractors to WDC's staff and to WDC's ICT systems but not so as to place WDC in breach of obligations of confidentiality to third parties undertaken prior hereto.
- 11.2 Each party shall use its best endeavours to ensure that confidentiality is maintained at all times in all matters relating to the provision of the Services.

12. Intellectual Property

- 12.1 In the operation of the terms of this Agreement neither party shall do or require anything which would cause the other to be in breach of its obligations regarding any Intellectual Property belonging to any other person.
- 12.2 Each party shall take all reasonable steps to safeguard the Intellectual Property of the other.
- 12.3 All Intellectual Property arising in the course of the delivery of the Services shall vest in WCC but WDC shall have an irrevocable perpetual royalty-free licence to use the same for its purposes as a local authority.

13. Data Protection and Freedom of Information

- 13.1 Each party will:
- 13.1.1 comply with the Data Protection Act 1998;
 - 13.1.2 maintain the confidentiality of personal data to which it has authorised access under the terms of this Agreement;
 - 13.1.3 indemnify the other party against loss, destruction or processing contrary to the Data Protection Act 1998 of data by itself, its servants or agents; and
 - 13.1.4 in accordance with paragraph 12 of Part II of Schedule 1 to the Data Protection Act 1998 (a) process any personal data supplied to it by the other party only on instructions from that party and (b) comply with obligations equivalent to those imposed on a data controller by the seventh principle of Part I of the said Schedule.
- 13.2 Each party will provide such assistance and/ or information reasonably required by the other in connection with any requests for information received by that party under the Freedom of Information Act 2000.

14. VAT

- 14.1 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties and taxes.
- 14.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums on submission of a valid and correct VAT invoice or such documentation as may be required by such duties or taxes.

15. Termination

- 15.1 Either party may at any time terminate this Agreement by giving to the other not less than 2 years prior written notice to expire on 31 March in any year and at the expiry of that notice this Agreement shall come to an end (though without prejudice to any rights then accrued or accruing).
- 15.2 In the event of either party ceasing to exist as a result of a statutory re-organisation of local government, this Agreement shall terminate on the date of such re-organisation

16. Termination consequences

- 16.1 In the event of termination of this Agreement;
- 16.1.1 WDC will immediately pay to WCC all arrears of Payments and any other sums due under the terms of this Agreement; and
- 16.1.2 WCC will supply to WDC upon request any information (including information relating to staff employed in the provision of the Services, which may be required for the purposes of TUPE Regulations or otherwise) files and documents required for the continuing provision of the Services; and
- 16.1.3 WCC will supply to WDC upon request any of WDC's property held by WCC for the purposes of this Agreement; and
- 16.1.4 Subject to clause 16.1.5, WDC will pay such reasonable sum as requested by WCC in relation to such costs incurred by WCC as a result of the termination (eg licence termination fees, ICT related costs)
- 16.1.5 WDC will indemnify WCC for any employee associated costs (including redundancy costs where the provisions of the TUPE Regulations do not apply) incurred as a result of termination of this Agreement
- 16.2 It will be the duty of both parties to try to minimise any losses arising from the termination of this Agreement and in so far as the provisions of the TUPE Regulations do not apply, the parties shall use their best endeavours to either redeploy or take a transfer of any affected staff employed by WCC in the provision of the Services and/or to help to seek alternative employment for them.
- 16.3 The termination of this Agreement will not affect or prejudice the rights and remedies of each party pursuant to this Agreement or otherwise and each party will be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

17. Miscellaneous

Warranty

- 17.1 Each party warrants its power to enter into this Agreement and has obtained all necessary approvals to do so.

Force majeure

- 17.2 Neither party will be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under this Agreement due to a cause outside its reasonable control ("force majeure"). Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.

Severance

- 17.3 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall in good faith amend that provision in such reasonable manner as achieves the intention of the parties without illegality.

Entire agreement

- 17.4 This Agreement sets out the entire agreement between the parties with respect to the subject matter covered by it and without prejudice to any rights which have already accrued to either party it supersedes and replaces all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the parties. The parties confirm that they have not entered into this Agreement on the basis of any representations not expressly incorporated in this Agreement.

Variation

- 17.5 The terms of this Agreement may only be varied by written agreement signed by both parties.

Change of address

- 17.6 Each party shall give notice to the other of any change in address or telephone fax or similar number of their business premises at the earliest opportunity but in any event within 48 hours of such change or acquisition.

Notices

- 17.7 Notices under this Agreement may only be given in writing.
- 17.8 Any notice given under this Agreement shall be sufficiently given if it is sent by fax, e-mail or first class post to the addresses stated above. Such notice or communication shall be deemed for the purposes of this Agreement to have been given or made 2 working days after posting.

No assignment or subcontracting

- 17.9 This Agreement is personal to the contract parties neither of whom may assign its rights or obligations under it in whole or in part without the other party's prior written consent. WCC shall not subcontract any of its rights or duties under this Agreement without the consent in writing of WDC.

- 17.10 Without prejudice to clause 17.9 WCC may employ such locum private sector contracted staff and other temporary staff to deliver the Services without prior agreement of WDC.

Waiver and cumulation of rights

- 17.11 No delay or failure by either party to exercise any of its powers rights or remedies under or in respect of this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing.

Survival of terms

- 17.12 No terms other than clauses 16 and 17.19 shall survive expiry or termination of this Agreement unless expressly provided.

Conflict of Interest

- 17.13 The parties agree to follow the Conflicts Protocol set out in Schedule 5.

Complaints and Disputes

- 17.14 The parties to this Agreement undertake and agree to pursue a positive approach towards dispute resolution which seeks to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the parties.
- 17.15 If WDC has any complaint or observation to make about any aspect of the service, in the first instance, it should be referred to the Manager to facilitate early redress. The parties shall then use their best endeavours to resolve the complaint to their mutual satisfaction.
- 17.16 If WDC remains dissatisfied or the complaint is serious the complaint should be referred to WCC's Head of Law and Governance in writing to The Head of Law and Governance, Resources Group, Warwickshire County Council, PO Box 9, Shire Hall, Warwick, CV34 4RR.
- 17.17 If WCC has any complaint or observation regarding the performance of WDC's obligations under this Agreement it should in the first instance be referred to WDC's Client Officer to facilitate early redress. The parties shall then use their best endeavours to resolve the complaint to their mutual satisfaction.
- 17.18 In the event that the parties are not able to resolve a dispute arising under this Agreement, it shall be referred to WDC's Chief Executive and WCC's Strategic Director of Resources (or their respective nominees) and if it is still not capable of resolution it shall be referred for mediation under clause 17.19.

Mediation

- 17.19 Either party may refer any dispute or difference arising in connection with this Agreement for mediation under a procedure appointed by the Centre for Effective Dispute Resolution.

Contracts (Rights of Third Parties) Act 1999

17.20 A person who is not a party to this Agreement shall not be entitled in his own right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

Jurisdiction

17.21 This Agreement shall be governed by English law.

Draft agreement 13.12.12

AS WITNESS the hands of the duly authorised signatories of the parties the day and year first above written;

SIGNED by

duly authorised for and

on behalf of WARWICK DISTRICT COUNCIL

SIGNED by _____ and

duly authorised for and

on behalf of WARWICKSHIRE COUNTY COUNCIL

SCHEDULE 1

THE SCOPE OF LEGAL SERVICES AVAILABLE UNDER THE SHARED LEGAL SERVICE

This Agreement shall relate to legal advice, guidance and representation in respect of the following:

- public, administrative and procedural law (including vires)
- licensing matters
- planning and environment law
- highways related matters
- housing law including possessions and disrepair
- criminal prosecutions
- contract/ procurement/project work
- conveyancing/ land transactions
- company / commercial transactions
- employment law
- debt recovery
- civil litigation (excluding cases where Counsel/external advice and/or representation is required)
- general advocacy
- all other statutory functions of WDC (including, without prejudice to the generality of the foregoing, Emergency Planning)

and such other work as shall be agreed between the parties

The Agreement shall not include the role of Monitoring Officer in respect of any transaction, but for the avoidance of doubt shall cover any legal advice required by the Monitoring Officer

SCHEDULE 2

BASIS OF REIMBURSEMENT OF COSTS

1. (Subject to the exceptions listed in clause 6.2 which will be charged separately) WCC will be reimbursed by WDC for work undertaken based on the hourly charge rates set out below. Full details of costs incurred on individual cases can be provided to WDC on request.
2. The hourly charge rates shown are for the financial year 2013/2014. Any hourly rate changes in subsequent years will be the subject of discussion between the parties in advance of the start of the financial year. WDC will be notified of the hourly rate charges for subsequent years in advance of the start of the financial year.
3. WCC will on a monthly basis provide WDC with a detailed statement of work undertaken under the shared service arrangement and the costs to be reimbursed in accordance with this Schedule.
4. Subject to the provisions of clause 6.3, WDC will make the Payments within 30 days of receipt of the monthly statement from WCC.
5. Payments hereunder shall be by BACS transfer to such bank as WCC shall from time to time direct.
6. Any queries regarding the detailed statement of work shall be directed to the name contact identified by WCC from time to time.
7. Any disputes regarding the charges and/or monthly statements should be dealt with in accordance with clauses 17.14 – 17.19 of this Agreement.
8. There will be situations where a barrister needs to be instructed to provide representation in court (usually in a higher court) or where other external legal advice may need to be sought. In those cases WCC will consult WDC before instructing a barrister or solicitor unless the situation is one of emergency. A suitable barrister or solicitor will then be identified and instructed by WCC. WDC (client contact) will be given an indication of the fees likely to be charged and WDC will be responsible for these. They will not form part of the budget for provision of the Services under clause 6.1. This paragraph does not apply to situations where under the Conflicts Protocol (Schedule 5) WDC elects to seek independent legal advice.

Hourly Charge Rates

The following hourly charge rates will apply from 1 April 2013 to 31 March 2014 for the following fee earning officers: -

Post	WCC Hourly charge out rate (£)
Head of Service	£95
Legal Services Manager	£88
Legal Manager	£83
Property Team Leader	£83
Team Leader /Senior Solicitor	£73
Solicitor	£62
Legal Executive	£55
Senior Legal Assistant	£49
Legal Assistant	£43
Trainee Solicitor	£43
Paralegal/Legal Support officer	£33

SCHEDULE 3

WARWICKSHIRE LEGAL SERVICES - STANDARDS FOR THE PROVISION OF SERVICES

GENERAL STANDARDS

1. Responsibility for the Case or Matter

- (a) WDC will be told the **name of the fee earner** responsible for the conduct of the matter, and the name of his/her supervising officer.
- (b) If the conduct or overall supervision of the whole or part of the matter is transferred to another officer, WDC will be informed in writing and given an explanation.
- (c) The fee earner should advise WDC when it is appropriate to instruct Counsel and seek confirmation that the cost can be incurred before issuing instructions.

2. Communications with WDC

- (a) **Instructions received** should be **acknowledged** in writing, (or a detailed reply given) within **5 working days**. Instructions should normally be given in writing and where appropriate WDC requested to give written confirmation of any oral instructions. **Oral instructions received** should be **recorded in writing within 1 working day**.
- (b) Oral advice given should be **recorded** on the **file within 1 working day** and where appropriate, confirmed **in writing within 5 working days**.
- (c) WDC should be advised at the outset of all matters, or as soon as possible thereafter of any issues raised of a non-routine nature; how they will be dealt with and the immediate steps to be taken.
- (d) The fee earner should keep WDC informed of **progress** in the matter on a monthly basis (unless an alternative timescale has been agreed with WDC) and the reason for any serious **delays**. (Copies of letters can be sent to WDC to assist in this process). WDC should also be advised in writing of any circumstances which will or may affect the degree of risk involved or cost benefit to WDC of continuing with the matter.
- (e) WDC should be advised, in writing about changes in the action planned to be taken in the matter, strategy or case plan, its handling or cost.
- (f) In the **absence** of a **specific quality** standard or an **agreed alternative timescale**, a substantive response to all correspondence or instructions given should be sent within **15 working days**.
- (g) **Urgent telephone calls** should be returned by the fee earner **within 1 working day** and **other calls** within **2 working days**. Where that is not sufficient or the timescale cannot be met due to the absence (or likely absence) of the fee earner from the office, the secretary or the person taking the call should arrange for another fee earner to return the call.
- (h) Documents and their contents should be explained to WDC wherever appropriate.
- (i) WDC should be advised in writing within **3 working days** of the completion of a matter and any continuing consequences should be summarised.
- (j) Communications with should be in clear plain English and avoid legal jargon as far as possible.

3. Information on Costs

- (a) The best information possible should be given to WDC as to the likely time and costs involved, **where an estimate is requested**.
- (b) Where it is not possible to estimate length of time and costs involved, WDC will be able to assess against the annual budget provision, the expenditure incurred on any particular matter from the monthly statement of work and job costing information provided by WCC.

- (c) In court proceedings, WDC should be advised of **Court fees incurred** in dealing with the matter and, if the case is unsuccessful, that the opponent's costs may also be included.
- (d) In all matters, the fee earner should consider with WDC whether the likely outcome of Court proceedings or of pursuing the matter in question will justify the expense or risks involved.

4. Outside Bodies and Individuals

- (a) Where applicable, these standards should be applied to dealings with outside bodies, firms and individuals.
- (b) In particular paragraphs 2 (a), (f) and (g) apply to all correspondence with outside bodies, firms and individuals.

5. Equality & Diversity

We are committed to the avoidance of discrimination and the promotion of equality and diversity in the provision of the Services.

WARWICKSHIRE LEGAL SERVICES: PRO-FORMA: STANDARDS FOR THE PROVISION OF SERVICES

TASK	<u>Date/Event</u>	<u>By Whom</u>
<u>1. WRITE TO WDC WITH:-</u>		
Schedule of Hourly Charge Rates and fixed rates	Start of financial year	Head of Service
Confirmation of Instructions received, <u>AND</u> Name of fee earner responsible for conduct of matter <u>AND</u> Name of Supervising Officer <u>AND</u> timescale for further contact (see acknowledgement memo for details required to be provided)	Within 5 working days of receipt of Instructions unless matter will be completed within 5 days.	Fee earner
		Fee earner
Name of substitute fee earner	Within 2 working days	Transferring fee earner
To seek Counsel's Advice	Need for Counsel's Advice	Fee earner
Confirmation in writing of any oral advice given, where appropriate	Within 5 working days of any advice given	Fee earner

2. ADVISE CLIENT IN WRITING OF:-

(a) All non-routine issues arising and any pursuant action	At outset of matter/ as soon as possible thereafter	Fee earner
(b) Progress made	On a monthly basis or as agreed with WDC	Fee earner
(c) Major changes to agreed work plan	Immediately and confirm in writing within 2 working days	Fee earner
(d) Reason for serious delays, change in risk profile or cost benefit.	Whenever necessary	Fee earner
(e) Changes to action planned, strategy etc.	Immediately and confirm in writing within 2 working days.	Fee earner
(f) The meaning of any documents issued.	Whenever necessary	Fee earner
(g) Date of completion and any continuing consequences.	Within 3 working days of completion	Fee earner
<u>3. SEND A SUBSTANTIVE REPLY TO ALL CORRESPONDENCE OR INSTRUCTIONS GIVEN</u>	Within 15 working days (in absence of specific quality standard or agreed timescale)	Fee earner
<u>4. Return all telephone calls</u> NB If the relevant fee-earner is not available to take a call within the relevant timescale, the secretary or person taking the call should arrange for an alternative substitute fee-earner to return the call.	Urgent calls - within 1 working day Other calls - within 2 working days	Fee earner/ secretary/ Person receiving call

5. <u>PROVIDE ESTIMATES OF LIKELY TIME & COSTS INVOLVED</u>	Within 2 working days of of request	Fee earner
6. <u>DURING COURT PROCEEDINGS, KEEP WDC ADVISED OF COURT FEES AND POTENTIAL COSTS</u>	Whenever necessary	Fee earner
7. <u>ASSESS JOINTLY WITH CLIENT THE EXPENSE/RISK OF COURT PROCEEDINGS AGAINST LIKELY OUTCOME</u>	Whenever necessary	Fee earner/ Supervising Officer

In addition, WCC will: -

- 1 Take full instructions from WDC and agree objectives for the matter
- 2 Plan how the matter will be delivered on the basis of the information available.
- 3 Report against that plan and highlight any variances
- 4 At WDC's option, provide WDC with publications, information and updates on matters of interest and provide WDC with the opportunity to attend training sessions offered by WCC on relevant topics.
- 5 To assist WDC with budget predictions, where appropriate and possible, estimate the cost at the outset of a matter and report on progress against that estimate when requested by WDC.
- 6 Agree time scales with WDC, where WDC has specific requirements

SCHEDULE 4

WDC QUALITY STANDARDS

- 1 WDC will provide full instructions and a full description of the job and a clear understanding of their objectives at the commencement of any matter.
- 2 Where possible, WDC should make any request for advice or assistance in writing, indicating the date by which a reply or response is required. WCC will use all reasonable endeavours to respond within that timescale. If it is or becomes apparent that it may not be possible to respond within such timescales, WCC will contact WDC and agree a revised timescale for action.
- 3 If WDC requires a response within less than five working days, telephone contact should be made with WCC who will use reasonable endeavours to respond within that timescale. In an emergency, WCC will use reasonable endeavours to respond immediately.
- 4 Unless WDC advises WCC to the contrary, WCC may communicate with WDC by e-mail and does not accept responsibility for any breach of confidentiality that may occur, whether by fault on WDC's part, or by any of their agents or as a result of the action of a third party.
- 5 WDC will provide, on request, sufficient information as to the identity of anyone from whom WCC is required to take instructions on each matter.
- 6 WDC will nominate a person to be the contact point for each matter. WDC will notify WCC of their contact details and advise WCC, promptly, of any changes to that contact.
- 7 WDC will provide WCC with all relevant documentation to provide the Services. This will include documents, notes, agreements, minutes, e-mails, and correspondence and personal statements.
- 8 WDC will, to enable WCC to carry out their instructions, respond promptly to requests for information, instructions and authorisations.
- 9 WDC will also retain all documentation relevant to the Services and make them available to WCC on request.

SCHEDULE 5

CONFLICTS PROTOCOL

Background

1. Warwickshire County Council (WCC) and Warwick District Council (WDC) have extended their shared service an arrangement such that from 1st March 2013, WCC will continue to be WDC's provider of choice with regards to WDC's requirements for legal advice.
2. It is envisaged that in the majority of cases, WCC will be able to meet all of WDC's requirements for legal advice without a conflict of interest arising. However it is acknowledged that in certain circumstances, the potential for a conflict of interest may arise which would require consideration as to whether it remained appropriate for WCC to provide (or continue to provide) WDC with legal advice on that particular matter.
3. This Protocol is therefore intended to apply to situations where the potential for a conflict of interest is identified either by WCC or by WDC.

Conflicts of Interest

4. For the purposes of this Protocol a conflict of interest will arise in a situation where WCC owes separate duties to act in the best interests of two or more clients (including existing external clients) in relation to the same or related matters, and those duties conflict or there is a significant risk that those duties may conflict [See Chapter 3 of the Solicitors Regulation Authority Code of Conduct].
5. It is acknowledged that in some situations it may be possible with the establishment of appropriate physical separations (eg conduct of matter allocated to 2 different fee earners, supervision and support undertaken by different managers, separate and secure file storage arrangements in place) to advise two or more clients in relation to the same or related matters. Such situations may include;
 - (i) planning applications where WDC is the planning authority and WCC has an interest in the application
 - (ii) cases where WCC as a landowner is entering into a planning agreement with the WDC
 - (iii) conveyancing transactions between WDC and WCC provided there is no conflict or significant risk of conflict
 - (iv) where WCC and WDC have a common interest and it would be disproportionate for example in terms of cost and general disruption to the matter to require separate legal advisors to be instructed
6. However it is also acknowledged that in some exceptional circumstances it would not be appropriate for WCC to provide (or to continue to provide) legal services to WDC in relation to a particular matter. Such circumstances are covered by Rule 3 of the Solicitors Regulation Authority Code of Conduct and would include cases where one Council is in dispute with, or is pursuing litigation against, the other or where one Council is the subject of prosecution proceedings by the other.

Conflicts of Interest Procedure

7. Where a WCC or a WDC member of staff feels that a conflict situation either has arisen or has the potential to arise, he/she shall notify WCC's Community and Environment Legal Services Manager who will notify WDC's Client Officer in writing of the same.
8. WCC's Community and Environment Legal Services Manager and WDC's Client Officer will use all reasonable endeavours to agree a course of action to deal with the conflict situation within 5 working days. Where time is of the essence (e.g. because of external deadlines imposed by courts or other bodies), the timescale in this paragraph and paragraph 10 below will be shortened in order that appropriate steps can be taken to meet the deadline.
9. If during this timescale agreement can not be reached as to how to deal with the conflict situation, the matter shall be referred to WCC's Strategic Director of Customers, Workforce and Governance (or his representative) and WDC's Chief Executive (or his representative).
10. Both parties will use all reasonable endeavours to agree a course of action to deal with the conflict situation within 5 working days.
11. If at the end of this period, agreement has not been reached;
 - (i) WCC retains the right to decline to act on the matter in question; and
 - (ii) WDC retains the right to elect to seek legal advice from an external third party in connection with the matter.
12. If as a result of applying this Protocol, WDC seeks legal advice from an external third party, WDC shall be responsible for procuring such external legal advice and the cost of doing so, together with the cost of the advice itself, shall be borne in its entirety by WDC.

General Obligations

13. In determining the appropriate course of action in a conflict situation, the parties will consider whether it remains appropriate for WCC to act on a particular matter. The criterion against which reasonableness will be judged is whether either party is at risk of prejudice because of the lack of separate representation.
14. WCC shall be under a continuing obligation to keep under review the potential for a conflict to arise on any matter on which they are already advising and to decide if the point has been reached when it would be untenable to continue to represent both Councils in a fair and open manner or without either or them being prejudiced. If during the course of conduct of a particular matter a conflict of interest arises, the procedure set out at paragraphs 7 – 13 above shall apply. If at the end of that procedure, it is decided that the parties should be separately represented, WCC shall make all files and other papers relating to WDC's interest in the matter available to WDC to pass to its new legal adviser.
15. If during the course of a matter, and after following the procedure set out at paragraphs 7-13 above, a conflict previously identified falls away and is no longer a conflict, it will be for agreement between the parties as to whether the matter remains with the external provider or is referred back to WCC.

16. In applying this Protocol, the parties will have regard to the Solicitors Regulation Authority Code of Conduct as from time to time in place including the duty of confidentiality (Chapter 4).
17. For the avoidance of doubt, in a conflict situation WCC's overriding objective is to provide legal advice to WCC and in such a situation it will be for WDC to seek external legal advice.