

# Shared Services Toolkit

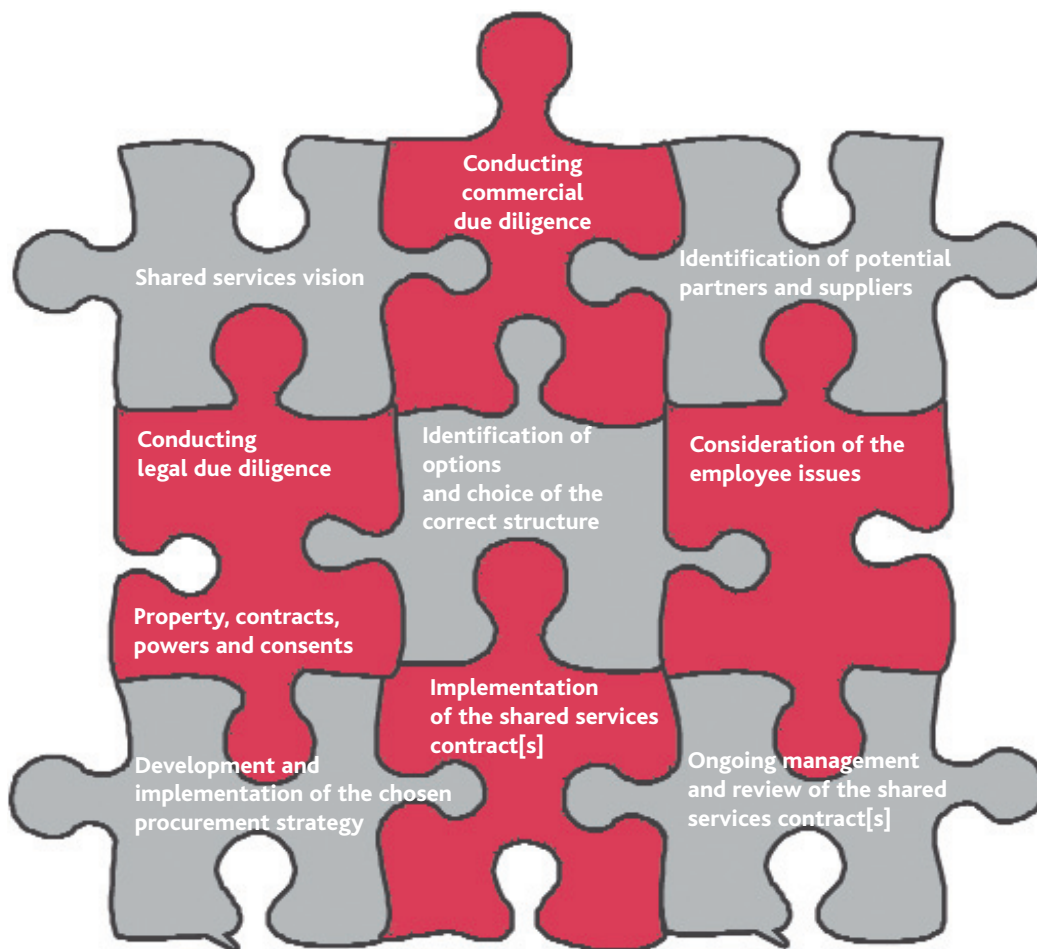


Pinsent Masons

## Introduction

Sharing services is essential if Government is to meet its financial targets. Whether you do this as a group of central or local Government departments – or through a shared approach to outsourcing – it is essential that you get your shared services structure right and that you cover off all the key issues. This toolkit is intended to help you achieve both of these requirements. If you tackle the key legal and financial issues at the very outset our experience tells us that you will be able to deliver on your shared services project faster and reduce risks.

## The Shared Services Jigsaw



However you wish to proceed with your project, the above jigsaw pieces set out the key issues which any public sector organisation (PSO) needs to consider. They are all important and interlinked and resolution of each of these areas will be important to the successful implementation of your shared services initiative.

Examples of our shared service projects..:

<b>Investment in infrastructure eg. IT systems</b>	<b>Sharing functions eg. procurement, finance or human resources</b>	<b>Common purchasing or framework arrangements</b>
<p>PSOs need to consider matters such as the functionality required, compatibility with existing systems, requirements for ongoing support and scalability.</p> <p>Is it possible or desirable to define the requirements as specific inputs (e.g. identified hardware and software to be made available) or is an output based approach preferred (e.g. the provision of payroll data processed to meet specified instructions)?</p> <p>Pinsent Masons LLP played a key role as legal advisor to the Cabinet Office in respect of the Public Sector Flex project (previously known as Project Isaac). This is the first central government IT shared services project.</p>	<p>These functions can be shared across different PSOs, as well as across different parts of the same organisation. Whilst cost savings through economies of scale can undoubtedly be realised, one of the key advantages of such sharing is the standardisation of processes.</p> <p>To date, these arrangements have tended to relate to 'back office' functions. These services are increasingly moving in the 'front-office' space. In any event, more efficient front line services should result.</p> <p>Pinsent Masons LLP is currently advising a major PSO in relation to its groundbreaking HR shared services project.</p>	<p>This is an example of shared services in the simplest form. Typically, a common set of terms and conditions are agreed with one or more suppliers who have been selected following a competitive procurement process. Participating PSOs can 'call off' goods or services as and when required, without having to conduct a full procurement exercise. The call-off arrangements will allow for the particular requirement to be specified on a case by case basis.</p> <p>Pinsent Masons LLP advised the Department for Children, School and Families in relation to the establishment of the framework agreement for the appointment of project managers in connection with the Academies programme.</p>

In each case a PSO will need to decide whether it is going to proceed by way of an outsourcing approach (i.e the services are to be delivered to the PSO or group of PSOs by a non-PSO third party) or by means of an intra-PSO supply of services. Depending upon which route you take some of the issues you need to resolve will differ. In addition, different considerations will apply if the shared services being procured are new or existing services.

## Shared Services Toolkit Overview

The toolkit comprises the following documents:

### Document 1: Stages in a shared services project

This document looks at the stages involved in a shared services project and what is typically involved at each stage. The stages range from setting out the shared services vision to the management and review of the contract.

In this document we distinguish between the outsourcing approach to shared services and the shared services model where one PSO is providing services to another. In the former case we look at the shared services project lifecycle.

### Document 2: Structures for shared services projects

There are a variety of legal structures which can be used by PSOs in respect of shared service delivery including:

- a memorandum of understanding between two or more (typically central government) PSOs;
- an administrative law structure (typically seen in a local authority context);
- a formal shared services contract; and
- a corporate entity.

In this document we identify the fundamental differences between these structures and examine in what circumstances their use is appropriate.

### Document 3: Procurement issues

The Public Procurement Regulations merit consideration at the earliest stages of planning any shared services project. In this document we examine the potential application of the EU Directive and the general Treaty principles to different types of shared services scenarios. To dispel a common misconception, our view is that the EU procurement regime can apply to an arrangement which involves a PSO to PSO arrangement. For this reason care must be taken even if a third party provider is not involved.

Continued on reverse

#### **Document 4: State aid issues**

It is possible that a proposed shared services project might involve State aid issues. To dispel two common misconceptions:

- State aid can arise even if there is no private third party provider directly involved in the project; and
- where a private third party provider is involved, State aid can arise even if a competitive tender has been conducted.

As unauthorised State aid is illegal, it is important that you factor State aid considerations into the initial appraisal of any shared services project. It is possible to structure arrangements in such a way that avoids or at least minimises State aid.

#### **Document 5: Employee issues**

It is essential that, in the planning and implementation stages of any shared services project, complete and thorough due diligence is conducted by PSOs in relation to all employment issues. Employee issues can often "make or break" a project.

Whatever the structure, and however large or small the project, there is likely to be some impact on employees. In this document we look at the potential application of TUPE, secondment and other employment models, staff communication and consultation, implementing culture change, re-skilling/training and equality & diversity issues. We also look at the potential for redundancies, changes to work location, post project HR support and employee issues on exit.

#### **Document 6: Tax issues**

It is essential to understand the tax issues of a shared services project as this can impact on the financial and commercial viability of the project. VAT is likely to be the most relevant consideration for PSOs. In particular, PSOs need to consider:-

- whether VAT will need to be charged on services provided pursuant to the shared services arrangements; and
- if VAT is charged, whether the PSO can recover it. Irrevocable VAT on shared services, which would not arise if the service were provided in-house, can go a long way to off-set projected cost savings as a result of the shared services project.

#### **Document 7: Checklist for Procuring Shared Services**

This checklist is a practical list of issues which from our experience will enable you to ascertain the issues which need to be considered in the legal context.

#### **Document 8: Case Study: Public Sector Flex**

Finally, we have provided a template MoU to be entered into between the PSOs participating in your project.

#### **Document 9: Skeleton Memorandum of Understanding (MOU)**

Finally, we have provided a template MoU to be entered into between the PSOs participating in your project.

## Contact Us

Should you wish to discuss the content of this toolkit or any legal matters relating to shared services projects, the following Pinsent Masons LLP contacts are happy to help.

We would be happy to discuss informally any strategic or general issues that may concern you. Please feel free to call any of the members of our team below:

**David Isaac**  
Partner

T: +44 (0)20 7490 6375  
M: +44 (0)7796 337 640  
F: +44 (0)207 490 2545  
E: david.isaac@pinsentmasons.com



**Scot Morrison**  
Partner

T: +44 (0)161 234 8344  
M: +44 (0)7884 236212  
F: +44 (0)161 234 8235  
E: scot.morrison@pinsentmasons.com



© Pinsent Masons LLP 2010

Should you have any questions please contact your usual Pinsent Masons adviser who will be able to assist you further.

**This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.**

LONDON BIRMINGHAM BRISTOL LEEDS MANCHESTER EDINBURGH GLASGOW DUBAI BEIJING SHANGHAI HONG KONG

T 0845 300 32 32

Pinsent Masons LLP is a limited liability partnership registered in England & Wales (registered number: OC333653) and regulated by the solicitors Regulation Authority. The word 'partner', used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm who has equivalent standing and qualifications. A list of the members of the LLP, and of those non-members who are designated as partners, is displayed at the LLP's registered office: CityPoint, One Ropemaker Street, London EC2Y 9AH, United Kingdom. We use 'Pinsent Masons' to refer to Pinsent Masons LLP and affiliated entities that practise under the name 'Pinsent Masons' or a name that incorporates those words. Reference to 'Pinsent Masons' is to Pinsent Masons LLP and/or one or more of those affiliated entities as the context requires. For important regulatory information please visit: [www.pinsentmasons.com](http://www.pinsentmasons.com)



**Pinsent Masons**

[www.pinsentmasons.com](http://www.pinsentmasons.com)