

<b>Briefing Note of:</b>	Charlotte Benjamin - Director of Legal and Governance Services
<b>Provided to:</b>	Corporate Affairs and Audit Committee Thursday 5 <sup>th</sup> March 2020
<b>Subject:</b>	Arrangements for legal services provision to Middlesbrough Council's children's services

## Summary

<b>Purpose of the Briefing</b>
To provide a briefing to the Committee setting out the current arrangements for provision of legal services to Children's Services

## Background and context

1. The Corporate Affairs and Audit Committee has requested a briefing about the arrangements to provide legal advice and support to Middlesbrough Council's children's services in the context of the recent Ofsted inspection of children's social care services.
2. Middlesbrough Council has an in-house team of lawyers who provide legal advice and support in respect of various council functions, including supporting children's services to carry out their statutory responsibilities. Prior to the publication of Ofsted's report the council had identified that a rising number of cases requiring statutory intervention was placing increasing demand on the existing team of lawyers and a task for the new Director of Legal and Governance Services was to review the staffing arrangements. In the meantime, demand was being met by a combination of in-house lawyers, locum staff, agents and counsel.
3. Ofsted's report of their inspection of children's social care services (25<sup>th</sup> November 2019 to 6<sup>th</sup> December 2019) noted the following at paragraph 16 of the report :  
  
'Senior management panels and *inconsistent legal advice* provide insufficient scrutiny for understanding children's experiences and to ensure that their needs are met in a timely way'.
4. Ofsted communicated with the local family court Designated Family Judge Her Honour Judge Matthews QC when carrying out their inspection and to formulate a view about the legal advice provided to children's services. In order to understand the court's perspective, a meeting between HHJ Matthews QC and Charlotte Benjamin, Director of Legal and Governance Services was arranged for 2 March 2020, the earliest date available due to capacity.

5. Her Honour Judge Matthews expanded upon her comments to Ofsted during the meeting on 2 March, indicating that her view about inconsistency reflected her experience of the way in which cases are presented to the court by the local authority. Whilst on some occasions, experienced local authority staff present cases to court very well, on other occasions advocates and evidence suffer from not being well prepared or well presented. Our challenge is to provide consistently good quality legal advice whilst managing a significant volume of cases as well as difficulties in recruiting permanent staff to lawyer roles.
6. It is clear that the volume of cases requiring the court's intervention present a significant challenge. There has been a significant increase in matters being brought before the Court:
  - 19/20 – 109 care applications received year to date\* compared to 82 applications in 18/19 and 73 cases in 17/18.
  - 19/20 – 76.9% of children who are the subject of care proceedings in Middlesbrough had Care Orders made compared to the national average of 50.9%
  - YTD Care applications in Middlesbrough have increased by 36.2% compared to last year

*\*Year runs Apr-Mar. Figures as at end of December 2019*

7. The **current staffing** within the childcare area of legal is as follows:
  - 3.4 FTE lawyers (solicitor/barrister/legal executive) across 4 posts, 2 of which are currently filled by locums, whilst the other 2 are held by permanent members of staff
  - 1 legal assistant (currently filled by a locum, to be filled by a permanent member of staff from mid-March)
  - 2 trainee solicitors

In addition, we currently have 3 vacant posts (1FTE lawyer and 2 legal assistants), although a recent recruitment exercise has resulted in appointments to the 2 legal assistant posts with staff taking up post in April 2020. Difficulties in recruiting lawyers to local authority lawyer roles is a national issue at present.

We currently have on average 110 live cases at one time. Due to capacity issues, approximately 18-20% of the cases are outsourced to Cygnet, a local specialist family law firm which takes on work from ourselves and other local authorities, including all of the matters for Redcar & Cleveland, and some matters for Stockton Borough Council. Barristers are used to provide advocacy support when a case involves complex legal issues such as non-accidental injury, or when the number of urgent matters exceeds the team's existing capacity.

8. Cases are dual allocated so that a legal assistant and a lawyer is linked to each case. We recommend that each lawyer holds no more than 20 cases. This recommendation is based on our own experience plus a recent benchmarking exercise carried out with 3 neighbouring local authorities. The demand on our existing resource can result in a reactive rather than proactive service provision
9. On the basis of the information above, a business case was prepared in January 2020 seeking additional resources in order to manage the current demand and to respond

effectively to the issues raised by Ofsted. The request for an additional four lawyers, and one legal assistant was approved. This will take the staffing levels to:

Lawyers 8.4 FTE  
 Legal Assistants – 4 FT

## Moving Forward

10. Legal Services main objectives are to:

- Provide clear and consistent legal advice
- Working as partners with children’s services to give advice and support at all stages of involvement with children and families

A more detailed analysis of the support required against Ofsted’s recommendations is as follows:

Ofsted Recommendation	Legal Input
The identification of and response to risk, particularly in relation to long-standing concerns of chronic neglect and wider exploitation	<ul style="list-style-type: none"> <li>• Attendance at legal planning/gateway panel</li> <li>• Provide early advice when issues arise/attendance at Strategy meetings</li> <li>• Attend early legal planning meetings</li> <li>• To read draft documents such as assessments, statements, and care plans before they are filed and raise any issues in a timely manner</li> <li>• Provide training to social workers s around threshold/risk</li> <li>• Input into strategies suggested by Children’s Services</li> </ul>
The understanding by partner agencies of threshold decisions for social work support and the quality of referrals	<ul style="list-style-type: none"> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children’s Services</li> </ul>
The quality and screening of referrals so that history is well understood, and appropriate information is sought to inform decision-making	<ul style="list-style-type: none"> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children’s Services</li> </ul>
The quality of social work assessments and plans and the extent to which they reflect the child’s history and risks to children	<ul style="list-style-type: none"> <li>• To read draft documents such as assessments, statements, and care plans before they are filed and raise any issues in a timely manner</li> <li>• Provide training to social workers</li> <li>• Input into strategies suggested by Children’s Services</li> </ul>
The response to children who go missing from home, care and education	<ul style="list-style-type: none"> <li>• Provide early advice when issues arise/attendance at Strategy meetings</li> <li>• Attend early legal planning meetings</li> <li>• Provide any legal advice required in a timely manner</li> <li>• Provide training to social workers</li> </ul>

	<ul style="list-style-type: none"> <li>• Input into strategies suggested by Children's Services</li> </ul>
The response to children with specific vulnerabilities, including children aged 16 to 17 years who present as homeless, disabled children and children held overnight in police custody	<ul style="list-style-type: none"> <li>• Provide early advice when issues arise/attendance at Strategy meetings</li> <li>• Attend early legal planning meetings</li> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The oversight and monitoring of and response to allegations against professionals working with children	<ul style="list-style-type: none"> <li>• Provide early advice when issues arise/attendance at Strategy meetings</li> <li>• Attend early legal planning meetings</li> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The timeliness and effectiveness of pre-proceedings and care proceedings work, including the quality of contingency planning	<ul style="list-style-type: none"> <li>• Provide early advice when issues arise/attendance at Strategy meetings</li> <li>• Attend early legal planning meetings</li> <li>• Review all PLO letters before they are sent to parents to ensure that they clearly set out the issue and that the work to be carried out is clear and achievable</li> <li>• Have regular reviews for cases which are in Court with the allocated fee earner</li> <li>• Have a Care Planning meeting 2 weeks following issue, and 4 weeks before the final evidence is to be filed to consider all options based upon the evidence available, and the contingency plans</li> <li>• To read draft documents such as assessments, statements, and care plans before they are filed and raise any issues in a timely manner</li> <li>• Provide training for social workers</li> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The availability of sufficient, suitable local homes to meet the needs of children in care and care leavers	<ul style="list-style-type: none"> <li>• Provide any legal advice required in a timely manner – such as legal advice around when a home becomes a care home, when accommodation is classed as care or support, unregulated placement etc</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The quality and timeliness of permanence planning, including the	<ul style="list-style-type: none"> <li>• Provide any legal advice required in a timely manner</li> </ul>

appropriate use of early permanence	<ul style="list-style-type: none"> <li>• Provide early advice when issues arise/attendance at Strategy meetings</li> <li>• Attend early legal planning meetings</li> <li>• Have regular reviews for cases which are in Court with the allocated fee earner</li> <li>• Have a Care Planning meeting 2 weeks following issue, and 4 weeks before the final evidence is to be filed to consider all options based upon the evidence available, and the contingency plans. Look at timescales for early permanence if appropriate</li> <li>• To read draft documents such as assessments, statements, and care plans before they are filed and raise any issues in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The provision of life-story work for all children in care	<ul style="list-style-type: none"> <li>• Provide training to social workers</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The access to emotional and mental health support for children in care and care leavers	<ul style="list-style-type: none"> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The educational outcomes for children in care and the proportion of care leavers who are engaged in employment, education or training	<ul style="list-style-type: none"> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The effectiveness of management direction and challenge by leaders and managers at all levels, including the effectiveness of oversight from independent reviewing officers	<ul style="list-style-type: none"> <li>• Have a clear escalation process in place for issues of challenge</li> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>
The effectiveness of strategic partnerships to work together to improve outcomes and protect children	<ul style="list-style-type: none"> <li>• Provide any legal advice required in a timely manner</li> <li>• Input into strategies suggested by Children's Services</li> </ul>

## Next Steps

### Recruitment

11. We have recently been successful in recruiting additional legal assistants to our team. We plan to engage in a recruitment exercise to build on and strengthen our team of lawyers and trainee solicitors. Having been unsuccessful in recruiting lawyers in recent times, we are engaged in discussions with the council's HR service about refreshing our recruitment approach. This will include consideration of how and where we advertise.

## **Quality monitoring**

12. The Director of Legal and Governance Services and Principal Legal Executive are directly involved in quality monitoring exercises including file reviews and direct observations, in order to identify and build on the strengths of the team whilst identifying any areas for development

We have a direct line of communication with the designated family judge at Middlesbrough County Court in order that we can identify and address any issues as soon as they arise.

## **Identifying and building on strengths**

13. We have continued to recruit and provide training to trainee solicitors. We currently have two trainee solicitors who are both highly regarded by the team and by the court. In a market that suffers from a shortage of local authority lawyers, we will continue to 'grow our own' staff in order to develop excellent quality lawyers. We have developed a partnership arrangement with colleagues at Durham County Council are providing advice and support around our current challenges.

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