

Briefing Note of:	Charlotte Benjamin - Director of Legal and Governance Services
Provided to:	Corporate Affairs and Audit Committee 26 May 2020
Subject:	Update re arrangements for legal services provision to Middlesbrough Council's children's services

Summary

Purpose of the Briefing

To provide an update to the previous briefing to the Committee of 5 March 2020 setting out the current arrangements for provision of legal services to Children's Services

Background and context

1. The Corporate Affairs and Audit Committee previously 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. This briefing was provided on the 5th March 2020.
2. This briefing is intended to update the Committee on the current position and to respond to an issue raised by the Chair of the Committee.

Point of clarification

3. At the last meeting of this committee the question was raised by the chair of the meeting whether all of the current employers in the 'lawyer' roles, as defined in the previous briefing, are in fact qualified lawyers. Whilst at the time we confirmed that all of the current post-holders are qualified lawyers, this point requires further clarification. A solicitor must have prescribed legal qualifications and a practising certificate issued by the Solicitors' Regulatory Authority in order to practice as a solicitor. A barrister must have prescribed legal qualifications and is regulated by the Bar Standards Board. A Chartered Legal Executive must have prescribed legal qualifications and be a member (Fellow) of the Chartered Institute of Legal Executives in order to practice as a Chartered Legal Executive. As the regulatory bodies advise that only regulated members should use the umbrella term 'lawyer' to describe themselves, the use of the phrase 'lawyer' in the previous briefing and discussions to describe staff, not all of whom are members of regulatory bodies (though all have appropriate qualifications), was unhelpful. I would like to take this opportunity to assure the committee that there was no intention to provide any misleading information.

Recruitment

4. As was outlined in the previous briefing, approval was given by the Council's corporate management team earlier in the year to recruit additional resources in legal services 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, however given the current pandemic response, all recruitment across the authority is on hold. Difficulties in recruiting lawyers to local authority lawyer roles is a national issue at present, and having been unsuccessful in recruiting lawyers in recent times, we are working with the council's HR service about refreshing our recruitment approach.
5. After further discussion with Children's Services we plan to recruit to a new role of 'court progression officer' who we envisage will be social work qualified and able to liaise between children's services and legal services in order to support social workers with the quality and timeliness of their evidence to the court, and to ensure that the local authority's role in the court process in terms of evidence filing is well-managed. We understand that this role has proven to be effective in other local authorities. The provision of comprehensive evidence with appropriate analysis and planning is essential to the effective presentation of the council's case at court.

Change in strategy – use of counsel

6. As we are unable to recruit to the additional lawyer posts at present, we have decided that Counsel will be instructed for all Issues Resolution/Final Hearings for the time being. There are a number of advantages to this temporary measure. By altering the approach and putting cases out to counsel in a more planned manner rather than instructing counsel as reactive measure when capacity becomes unmanageable, we have created capacity for the in-house team to more proactively provide some of the assistance to Children's Services that was outlined in the previous briefing. In addition, instructing counsel earlier means that we have a wider range of barristers available to choose from and so we can ensure that the expertise of the barrister fits the case. This measure will be kept under regular review.

Legal Gateway panel

7. Since the last briefing we have further considered the way in which we provide legal advice to the Legal Gateway Panel. A key component of the relationship with Children's Services in terms of safeguarding is Legal Gateway Panel. This panel is held on a weekly basis and consists of a representative from Legal Services and a Head of Service from Children's Services. Where cases are of a significant concern to Children's Services and court proceedings are being considered, the case is presented by the Social Worker and Team Manager to the panel.

At the meeting, a decision should be made in principle about whether the threshold criteria (as per the Children Act 1989) have been met. In practical terms this means that the panel must ask the question whether there is factual evidence of any significant harm or risk of significant harm to the child that is linked to the care being given to that child. The local authority should then decide, based on a robust analysis of the level of assessed risk, whether:

- It is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings; or
- Whether court proceedings should be initiated immediately.

8. No legislative requirements prescribe who is qualified or entitled to act as legal adviser to the Legal Gateway Panel. The previous President of the Family Division, Sir James Munby, said that it should be someone with suitable experience. Our legal adviser to panel is a member of the team with around 30 years' experience of public law children's cases who is highly regarded by the local court and children's services. This member of the team acquired legal executive qualifications a number of years ago and is authorised to advocate for children's services at the magistrates court and the county court. I am satisfied, based on feedback both from children's services and line management, that our legal representation at Legal Gateway panel, provides consistency of advice from an experienced member of the team and is of a very good standard.

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