

Appendix 1

Legal Services Review of Children and Adults Legal Team

1. Work of the team

- 1.1 The team provides dedicated legal support to Children's' Services, Adults Services and Education Services. The team also provides advice to the FOI team as well as advice on data protection and disclosure issues involving the police and other agencies. The team deals with childcare matters, adult social care matters and SEND matters. Lawyers in the team provide advice, guidance and conduct cases on behalf of the Council in the Magistrates Court, County Court and High court. The team also provide advice to the LSCB (Local Safeguarding Board) and as referenced above advice on matters pertaining to data protection particularly in respect of police investigations.

2. Childcare matters

- 2.1 The core area of the team's work is advice and court litigation in the following statutory duties/areas:
- Children in need
 - Looked after children
 - Protection of Children
 - Adoption and Fostering of Children
 - No recourse to public funds and asylum matters
 - Increasingly Deprivation of Liberty (DOLS)
- 2.2 The conduct of the cases involves providing written legal advice, attending urgent legal planning meetings to give advice, attending Legal Gateway meetings, attending court directions and other procedural hearings, advocates meetings and organising representation and preparing cases for final hearings. The cases are complex due to the nature of the harm suffered by the children, the need for expert assessments (consultant paediatrician, psychiatrist, psychologist etc.), the number of parties, the volume of evidence, the burden of "proving" the Local Authority's case and the length of some of the final hearings. It should also be noted that as per below with Adult social care, the team will need to deal with children and young people who need to be subject to DOLS. This will include teenagers who require certain types of regimes in residential placements as well as some Children with Disabilities who are in educational and residential placements. A new "DOLS" panel is being set up by Children's Social Care to address this issue and further work (advice, legal attendance at the panel, court applications/hearings) will arise from this.

- 2.3 The team has also recently been dealing with some particularly difficult non accidental injury cases and one case in particular which required input from three lawyers in the team and is one of the most complex cases the Authority has ever had to bring.

3. Adult Social Care

- 3.1 Adult social care services seek assistance from the team on a range of issues including:
- Advice on Mental Health matters including issues around s. 117 After Care
 - Deprivation of liberty, Deputyship and Court of Protection matters
 - Protection of vulnerable adults
 - Judicial reviews
 - No recourse to public funds and asylum matters
 - Designation matters
 - Assisting with Ombudsman complaints
 - Considering and assisting with the drafting of ASC policies
 - General advice on matters such as capacity and duties to care leavers and migrants
 - Advising on the new LPS scheme due for implementation in April 2022, it had previously been scheduled for October 2020.
- 3.2 This is a specialist area which requires dedicated support. Currently the service has no funding to employ a lawyer to support this area of work. In respect of DOLS in particular this is very much a growth area. A locum solicitor was engaged from 23 April 2019 to provide dedicated support in this area. He has been dealing with a variety of matters and working fully to capacity. Although he is contracted to work 36 hours, he has been working well in excess of those hours to keep up with demand. From 23 April 2019 to 31 March 2020 he recorded total of 1562 chargeable hours on Norwel working on adults' matters. This is well above Law Society target of 1100 chargeable hours per fee earner. As of the 17th July, a second experienced adult social care locum has been engaged on a part time 3 day a week basis to keep up with demand. It is considered that funding is required for a full time senior adult social care lawyer and contingency funding to be available to recruit an additional locum lawyer (as per the current situation) to deal with peaks in demand.
- 3.3 As of August 2020, the service was informed that there are 11 Community DOLS applications that need to be made. The current two Adult Social Care lawyers have been working through these. These applications require experience and a diligent quality assurance. The service has also been told that there are approximately 125 care arrangements in the community requiring an assessment for DOLS. A large proportion of these arrangements will require an application to be made to the court. Each application involves

a lawyer carefully checking/amending the paperwork to ensure that the papers and evidence are fit for court purposes. This is a time-consuming process.

- 3.4 The court fee for each DOLS application is £365. Some may require a hearing and the hearing fee is £485. There will, therefore, need to be a contingency set aside for the court fees, bearing in mind the number of applications/potential applications involved and if only 50% of cases require payment of a court fee that will create an unfunded budget pressure of over £20k . The likely figure will be closer to £40k.
- 3.5 In order to manage the demand for the service, Legal Services in collaboration with Adult Services have formalised the instruction process so that when Adult Services seek to instruct the legal department, the request for legal involvement will require sign off from a senior manager in Adult Services (the equivalent of H of S in Children's services). This is with a view to controlling and managing demand. This will also give more transparency on instruction to legal and give ownership back to the client department control demand. This means work will not be actioned until the process is followed and this will need to be communicated and owned by service managers. After this new system is set up we will monitor the workload, if work continues at its current trends, consideration would need to be given as to whether the 2nd locum adult social care lawyer should be engaged full time. Conversely, if the increase is temporary (and this does not seem likely) the locum acting as a 2nd ASC lawyer could be disengaged.

4. Education and SEND

- 4.1 The team also advises Education Services on a range of education issues involving the local educational authority statutory functions including:
- Special Educational Needs and appeals in the SEND tribunal.
 - Judicial Reviews relating to EHC plans and funding decisions.
 - Admissions and Admission appeals
 - Exclusion and Exclusion Appeals
 - School Transport
 - School security
 - Complaints relating to EHC plans
 - Education prosecutions for non-attendance.
- 4.2 Education advice and representation at SEND tribunal work is a growth area and there is an increased demand for legal support. The tribunal used to limit itself to education matters but now has expanded its remit to health and social care matters meaning that hearings will be longer and more complex. Unfortunately, the service does not have a specialist education lawyer to carry out this work on a dedicated basis. Currently the Principal Lawyer for the team

provides support on some education matters. He also commissions counsel to carry out advocacy in the SEND tribunal. This is a niche area of the law and barristers charge a premium for advocacy. For example, on a 1 day hearing the brief fee could be in the region of £2k-5k per day. On a childcare matter the brief fee for a 1 day hearing is typically around £700-£1000 per day.

- 4.3 The Education Service also use Invicta Law which is the trading arm of Kent County Council to provide support for SEND tribunal work involving health and social care matters which are particularly complex. The fees charged by Invicta law is currently £118 per hour. Their support includes meetings with the Council and other parties, checking procedural matters and advising on aspects of legal defence in conjunction with the Tribunal Service Manager. The spend on Invicta Law from October 2019 to January 2020 is £7,631.28 inclusive of VAT. If continuing at these levels then that equates to £30,524 per annum.
- 4.4 The service proposes to increase capacity in the team to provide support to Education services by recruiting a part time Education Lawyer at BR9-13 grade on a part time basis. If the recruitment process is not successful, then the service will look to work with other local authorities or providers or spot purchase to create capacity using the allocated funding.
- 4.5 It should be noted that this is an area where the cost to the Council if a tribunal outcome is unfavourable is considerable and can involve paying for expensive educational placements for many years which the Council may not have considered necessary to meet educational outcomes. It is therefore cost effective to invest resources in robustly defending the Council's position.

5. Team Structure and Current Workload

- 5.1 The established team structure consists of a Team Leader, 2 Senior Lawyers, 6 Lawyers (one of whom works 3 days per week) and 2 Legal Support Assistants. However, in order to cover demand for service we have retained additional locums. Currently the following officers are in post:

Table 1: Current staff in Children and Adults Team

Job Title	Permanent/Locum	Contractual weekly hours	Areas of specialism
Team Leader and Principal Lawyer	Permanent	36	Team manager Childcare Education Data

			protection Supervises Senior Lawyers Advocacy Some Adults Matters Judicial Reviews
Senior Lawyer and Deputy Team Leader	Permanent	36	Childcare Legal Gateway Panel advisor Supervises junior lawyers Attends and advises at PLO tracking meeting and Permanency planning meetings
Senior Lawyer and Deputy Team Leader	Permanent	36	Childcare Legal Gateway panel advisor Advocacy Supervises junior lawyers Judicial Reviews
Lawyer	Permanent	36	Childcare
Lawyer	Permanent	36	Childcare and Mental Health matters
Legal Executive	Permanent	36	Childcare
Lawyer	Permanent	22 (part time)	Childcare
Lawyer	Permanent	36	Childcare

Lawyer	Locum	36	Childcare
Legal Support Assistant	Permanent	36	Prepares court bundles Plus other business support including minuting of meetings
Legal Support Assistant	Locum- . The post (post number 20187) is within the structure but is part funded. We do not have sufficient funding to cover from BR3-6 grade range.	36	Prepares court bundles, minutes meetings Plus other business support
Unfunded posts outside structure			
Lawyer	Locum	36	Due to increased workload we have taken on this childcare lawyer who started on 13.02.20 to work on the additional childcare cases that need to be issued. She has held a high case load since starting with London Borough of Bromley.
Lawyer	Locum. The post was funded for 3 months from Covid funding.	36 hours a week	Childcare matters
Lawyer	Locum	36-41	Adults social care
Lawyer	Locum	22 (part time)	Adult social care

- 5.2. Following on from the OFSTED inspection in 2016 the team experienced an unprecedented increase in case load. For the year 2015/16 the team issued 47 sets of new care proceedings. This was consistent with the pattern of cases over the last 10 years and the team model is designed to support c50 cases per annum. For the year 2016/17 the team issued 98 cases. In the year 2017/18 the team issued 75 cases. In 2018/ 19 the team issued 58 cases and the last (financial) year 2019/20 the team issued a total of 70 cases.
- 5.3 So far in the year 2020/21 the team have issued 28 Care cases. As of the 21st October 2020 the team were carrying 58 live care cases in court and 27 ongoing Public Law Outline cases the tier below issuing of care proceedings. Five of those PLO cases are set to head into care proceedings. A number of cases have completed in the last three months including one which concluded after a five day final hearing. To give an idea as of late July 2020 the team were holding 69 care cases. The team are also dealing with ongoing private law and adoption matters. The team also deal with emergencies as they arise including abridged service Interim Care Orders and Emergency Protection Orders (EPO) which requires immediate action to safeguard children. Recently there have been an increase in demand for EPOs. The team may deal with emergency applications which can run late into the night and legal support is required to deal with these applications after hours. By way of an example of how busy the team gets, on Friday 7th February the team had an unprecedented 11 cases listed in court for hearings. 1 case was adjourned on the day and 10 went ahead. However, case preparation was necessary for all 11 cases. A further/more recent indication of how busy it can be was week commencing the 1st June 2020 when there were 21 court hearings in a week.
- 5.4 The team advises the Gateway Panel meetings once a week which is serviced by the senior lawyers in the team. On average 3-4 cases are heard per week at Gateway Panel. Gateway Panel generates considerable extra follow up work for senior lawyers. For example, drafting PLO letters, writing letters to schools, making police disclosure requests, confirming advice given in writing and producing minutes. Senior lawyers also support fortnightly PLO tracking meetings and Early Permanency Panel.

Table 2: Number of childcare cases issued by year

2015/16	2016/17	2017/18	2018/19	2019/20
47	98	75	58	70

6. Work allocation – childcare

- 6.1 As a general guide 8 care cases for an experienced childcare lawyer is enough work and in indication of working to full capacity. However, with complex cases even 8 per lawyer can lead to a work overload in complex cases. With increasing the workload to 9 cases per lawyer there is a danger of work overload. Work overload is not only stressful for the lawyer concerned but can lead to inadequate case preparation and missed court deadlines which puts the Council's case and reputation at risk in court. It should be noted that the team are currently dealing with a complex care case involving sexual abuse which was listed in court for a 20 day hearing. The hearing time estimate has since been reduced, but the number of hearings had to date will mean that in terms of court time 20 days will not be far of being expended. The matter is being worked on by a senior and a junior lawyer within the team. This case involves numerous court directions and is very work intensive. It is the longest case which long standing staff members at Bromley can ever recall and has Queens Counsel, engaged for two of the Respondents. The Court has directed that the Council engages two Counsel to deal with the matter.
- 6.2 There continues to be a steady flow of cases to issue from Legal Gateway panel. Unallocated cases are of serious concern due to the lack of active case management prior to the commencement of proceedings. This can create potential risk of harm as delay is usually prejudicial to the welfare of a child. We have retained a locum lawyer on a short-term basis to cover the additional work. She already holds 9 care cases (two of which are linked) and started work on 13 February 2020. She has maintained a strong case load since arriving. Another locum commenced work with the team on the 24th July 2020 to deal with the additional cases and has taken on the case load already of our in-house advocate who has recently left. This locum was temporarily funded for three months from the dedicated Covid fund.
- 6.3 Another work pressure for the team is the rise in private law application cases which need allocation. These are proceedings by parents and other carers primarily involving residence and contact. The work in this area has increased as a result in the reduction of public funding (legal aid) for these cases which has led to a significant number of parties being unrepresented. The courts rely on local authorities to provide welfare reports as well as Special Guardianship reports. There is work for lawyers in chasing the courts and parties to provide the statements and reports filed in the proceedings, checking the reports before they are filed and served and in some cases attending court to make representations. The service has no control over the demand for this work as we are ordered by court to assist when required. With the trend in increased family disputes concerning children arising out of divorce and family breakdown this work is set to increase. The team also deals with adoptions. The last year [2019/20] the team dealt with 6 adoption applications.

7. Work allocation – Adults social care

- 7.1 This area of work is currently unfunded. Childcare lawyers assist with this area of work and in addition we have retained a lawyer on a locum basis to work exclusively on adults social care work, as well as a part time locum lawyer. As the locum lawyers are unfunded this is resulting in the legal staffing budget being overspent. Adult services require legal support and the evidence is that there is a growing demand for this area of work.

8. Advocacy and expenditure on counsel

- 8.1 Due to the increased case load the spend on counsel has also been significantly above budget in the last 3 years. Table 3 below shows the expenditure on counsel by the Children and Adults team. To ensure counsel is used only when necessary instructions to counsel need prior approval from the team leader and the AD. We are trying to tackle the overspend by carrying out more advocacy in house. To this end, fee earners are encouraged to carry out some advocacy in court however with fee earners acting on capacity on case preparation work the advocacy is not always feasible. We have employed a senior solicitor who specialises in advocacy. He has been carrying out a significant amount of advocacy for the team thereby saving money on Counsels fees. We also used a locum solicitor who worked on a part time basis and carried out advocacy for the team as using her instead of counsel was more cost effective. However, towards the end of her time in Bromley it was necessary for this to carry out more case work and hold cases due to the extra demand. Other team members such as the Principal Lawyer and junior lawyers have also carried out advocacy in court resulting in costs savings for the Council. The team keeps a log of all in-house advocacy carried out which demonstrates the savings made. However, pressures from the high volume of case work and multiple listings of cases mean that it is not always practicable for the in-house team to undertake advocacy.

Table 3: Expenditure on Counsel for Children and Adults Legal Team

2015/16 £	2016/17	2017/18	2018/19	2019/20	2020/21
168,774	259,171	240,170	338,549	358,170	187,600*

* part year up to 31 October 2020