
Decision Maker: **THE LEADER
WITH PRE-DECISION SCRUTINY FROM EXECUTIVE,
RESOURCES AND CONTRACTS POLICY AND DEVELOPMENT
SCRUTINY COMMITTEE ON 18 NOVEMBER 2020**

Date:

Decision Type: Non-Urgent Executive Key

Title: **REVIEW OF LEGAL SERVICES CHILDREN AND ADULTS
TEAM**

Contact Officer: Shupriya Iqbal, Assistant Director, Legal Services
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Chief Officer: Mark Bowen, Director of Corporate Services

Ward: All

1. Reason for report

- 1.1 A review of the services provided by the Children and Adults legal team, the budget for the service, the demand for the service and the resourcing requirement going forward.

2. **RECOMMENDATIONS**

2.1 **Relevant Portfolio Holders and Policy & Development Scrutiny Committees recommended to note the report and comment as required.**

2.2 **The Leader, is recommended to:**

- 2.2.1 To agree to the creation of 2 FTE permanent lawyer posts to support childcare work (£63k) and adult social care (£85k).
- 2.2.2 To agree funding of £35k to fund a 0.5 FTE Education lawyer post.
- 2.2.3 To increase the Legal revenue budget from April 2021 by £183k to fund these additional legal posts.
- 2.2.4 To drawdown from Central Contingency in 2020/21 a sum of £61k to fund the part year cost of these posts from 01 December 2020.

- 2.2.5 To include a sum of £170k held in Central Contingency for potential locum costs for additional childcare and adults social care legal support, to be drawn down when required by the Director of Corporate Services in consultation with the Portfolio Holder for Resources, Commissioning and Contract Management.

Impact on Vulnerable Adults and Children

1. Summary of Impact:
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Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Children and Young People
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Financial

1. Cost of proposal: Up to a total of £353k per annum -
 2. Ongoing costs: Permanent staffing costs of £183k per annum and potential locum costs of up to with a further £170k per annum.
 3. Budget head/performance centre: Legal Services
 4. Total current budget for this head: £1.921m
 5. Source of funding: Revenue budget increase plus Central Contingency
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Personnel

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Care Act 2014, Mental Health Act 1983, Mental Capacity Act 2005 in relation to Adults Social Care. Children Act 1989, Children and Families Act 2014 and Education Act 2002 and 1986 in relation to Children's Social Care and Education.
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: Not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The current Legal Services team is part of the Chief Executives Directorate. It is managed by Shupriya Iqbal, Assistant Director of Legal Services who reports to Mark Bowen, Director of Corporate Services and the Council's Monitoring officer.
- 3.2 The service is divided into three teams:
- a. Children and Adults
 - b. Commercial
 - c. Planning, Litigation and Licensing
- 3.3 Following the OFSTED inspection of children's services in Bromley there has been a significant increase in demand for the service resulting in a high volume of work for the Children's and Adults team. Although additional funding has been made available to fund an extra lawyer the team is finding that workload has peaked once again, and existing staff no longer have the capacity to cope with the demand for the service. The recent Covid pandemic has also led to a change in how hearings are conducted and contributed to a large number of court hearings being listed, some at short notice.
- 3.4 Information in relation to the work of the team, service demand and staffing are set out in detail in Appendix 1. The team supports Children Service, Adults Social Care and Education services to provide statutory services. Although the team has taken measures to control spend and manage and mitigate demand it is no longer possible to continue service provision without an increase the service budget to meet demand for these statutory services. The team needs to recruit additional staff and additional funding as set out below is needed to sustain the current and ongoing workload.
- 3.5 The proposal is to recruit an additional permanent childcare lawyer on grade BR9-13 at a cost of £63k per annum inclusive of on costs. In the event that the workload is beyond the capacity of one full time lawyer as is the case currently then the service will retain a second lawyer on a locum basis to create extra capacity. Using a locum lawyer gives access to immediate expertise and gives more flexibility to deal with peaks and troughs in demand as locum lawyers can be disengaged if workload declines. Therefore, it is proposed that additional funding is held in Central Contingency to retain another lawyer on a locum basis to deal with peaks in demand at a cost of up to £85k per annum.
- 3.6 There is a continuous need to provide support to Adult Social Care Service and it is therefore proposed that the service recruits one Senior permanent Adults Social Care lawyer on grade MG5 at a cost of up to £85k per annum inclusive of on-costs. To deal with peaks in demand such as the current position it is proposed that a second locum lawyer is retained when required. As mentioned above using a locum lawyer will give the service more flexibility and save costs where demand declines. It is therefore proposed that funding is held in Central Contingency to retain another lawyer on a locum basis to deal with peaks in demand at a cost of up to £85k per annum.
- 3.7 At present the service seeks to recruit a part time Education Lawyer to provide extra capacity to support Education Service. There is insufficient work to retain a full-time lawyer for education work. Legal Services were in discussions with London Borough of Bexley to jointly recruit an Education lawyer to share on a 50/50 basis. However, Bexley have recently advised that they are not ready to progress at this point in time with the recruitment. It is therefore proposed that the Service tries to recruit a part time Education lawyer. If this approach is not successful, the Service will look to work with other local authorities or providers or spot purchase to create

additional capacity to carry out Education work. The service therefore requests funding for the equivalent of 0.5 FTE Education Lawyer at a cost of £35k.

- 3.8 In total, as shown in Table 4, an increase in £183k per annum is required in the legal revenue budget to create the additional posts and contingency funding of a further £170k per annum to be available to draw down by the Director of Corporate Services in consultation with the Portfolio Holder for Resources, Commissioning and Contract Management to retain additional locums to deal with peaks in demand. The childcare, adult care and education lawyers are anticipated to be employed from 01 December 2020, therefore, part year funding of £61k is required to be drawn down from Central Contingency during Q3 of 2020/21.

Table 1: Funding requirement for Children and Adults Team

Work type	Permanent post £	Contingency for locum £
Childcare	63k	85k
Adults	85k	85k
Education	35k	
Total	183k	170k

- 3.9 As set out in **Appendix 1** the service ensures workload is managed efficiently to ensure all lawyers are working to capacity. The service has agreed an instructions proforma which needs to be cleared by senior managers in Adults Care Service as mitigation measure to control demand for legal service. The service is also working on a frequently asked Question and Answer note which will, be circulated to staff in Adult Social Care to reduce demand for Legal Service in relation to routine enquiries.
- 3.10 If the proposal to make funding available to recruit staff and locum staff is not agreed then the service will continue to be overspend on budget. As the service provides statutory services in relation to Children and Adults it needs to provide legal support when requested by Children and Adults Social Care services. If legal service stopped taking on additional work once all lawyers within the structure are working to full capacity, then the Council will risk being in breach of statutory duty. This will lead to financial and reputational loss for the Council.
- 3.11 It should also be noted that every 3-4 years the service may come up against a big case that requires specific resource allocation due to the complexity and costs involved. As referred to in paragraph 6.1 of Appendix 1, the team is dealing with a particularly complex and resource intensive case at present. Three in house lawyers have been involved in case preparation. The Council was directed to use two Counsel to deal with the case by the court, therefore, a senior and junior counsel are being used to deal with advocacy and advice on the conduct of the case. There was a 10 day fact finding hearing and a number of other hearings amounting to circa 20 court hearings so far. The bill so far on counsel's cost is £100k. There will be at least one further welfare final hearing which will incur further costs. Specific funding was sought and made available from the Central Contingency for this case. Cases like this are rare and specific funding will need to be made available as and when the service needs to deal with such a case.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

The Children and Adults Team provides a service to Children's Service, Adult Social Care Service and Education Service. Recruiting additional lawyers as proposed in this report will enable the service to meet the demand for service and therefore have a positive impact on vulnerable adults and children.

5. POLICY IMPLICATIONS

No applicable

6. FINANCIAL IMPLICATIONS

6.1 The Legal Services controllable revenue budget for 2020/21 is £1.921m.

As reported in latest budget monitoring for Q2, an overall overspend of £332k is projected to the end of the year, largely in respect of additional staffing costs to meet the demand for legal support to care and education services.

If the recommendations are agreed, the revenue budget would increase by £353k a year from April 2021, as follows:

	2020/21 £'000	2021/22 & Full Year £'000
Legal Services - Current Approved Budget	1,921	1,921
Plus: Childcare Lawyer	21	63
Adult Social Care Lawyer	28	85
Education Lawyer (0.5FTE)	12	35
Legal Services Revised Budget	1,982	2,104
Held in Central Contingency: Provision for locum support from 01/04/21	-	170
Total Revenue Budget Provision	1,982	2,274

6.2 Additional resources for legal support to specific projects were also approved by the Executive in September for the following programmes:

6.2.1 The report "Transforming Property – creation of a £30m disposals programme" was considered by the Executive, Resources and Contracts PDS Committee on 10th September and that funding of £1.126m from future capital receipts be used for additional programme resources including dedicated legal resources at £95k a year for 2 years; and

6.2.2 The Renewal, Recreation and Housing PDS Committee considered the report "Approach to Building Homes in Bromley" which recommended funding from the Housing Investment Fund earmarked reserve for additional resources, including dedicated solicitor costs of £100k a year for 2 years. This is to create capacity within the Commercial Legal Team for Contracts and Property lawyers.

6.3 Assuming the recommendations in this report are agreed, the total additional legal resources approved would therefore be as follows:

	2020/21 £'000	2021/22 £'000	2022/23 £'000	2023/24 £'000
Social Care & Education lawyers	61	183	183	183
Social Care locum support	-	170	170	170
Disposals programme resource	32	95	63	-
Housing programme resource	25	100	75	-
Total Additional Resources	118	548	491	353

Funded by:				
- Central Contingency	-61	-	-	-
- Capital Receipts	-32	-95	-63	-
- Housing Investment Fund	-25	-100	-75	-
Revenue budget increase	-	-353	-353	-353
Total Funding	-118	-548	-491	-353

NB: the start date of additional disposals and housing resources is assumed to be 1/12/20

7. PERSONNEL IMPLICATIONS

- 7.1 There are no negative HR or and employment law implications arising from the proposed increase in staffing as detailed in the report. On the contrary, if the additional posts are agreed and recruited into as quickly as possible, they will alleviate the caseload pressures on the existing staff and thus increase staff efficiency, motivation and morale. It is therefore worth adding that the Council takes seriously its “good employer” responsibility and the legal duty of care to provide adequate resources pursuant to the Health and Safety at work Act 1974 and the Management of Health and safety Regulations 1999.

8. LEGAL IMPLICATIONS

- 8.1 The team supports statutory service under the Care Act 2014, Mental Health Act 1983, Mental Capacity Act 2005 in relation to Adults Social Care. The team supports statutory services under the Children Act 1989, Children and Families Act 2014 and Education Act 2002 and 1996 in relation to Children’s Social Care and Education.
- 8.2 If the recommendation to recruit additional permanent staff is agreed then staff will be employed under the London Borough of Bromley employment terms and conditions. Locum staff will be recruited through the Council’s agency arrangement with Adecco.

9. PROCUREMENT IMPLICATIONS

Not applicable

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	