

Report of Section Head, Social Care (Legal)

Report to the City Solicitor

Date: 9 November 2011

Subject: Staff resources for the Social Care (Legal) Section –proposals to make the temporary Principal Legal Officer (Adult Social Care) post permanent

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	No

Summary of main issues

1. Due to the expansion of Adult Social Care (“ASC”) legal work, the section has employed on a supernumerary basis a locum Principal Legal Officer (ASC) for over 2 years.
2. The volume of work in this area of law is highly likely to continue to increase.
3. It is a poor use of resources to employ a locum rather than a permanent member of staff as the cost of a locum is much greater than employing a member of staff, ie up to £55kpa.
4. There is a need for the current temporary Principal Legal Officer (“PLO”) post to be made permanent; this will enable the ASC Legal Team to continue to respond effectively to the significant and sustained increase in ASC legal case work, it will create cost savings for the Local Authority of up to £55k pa and create a more stable and effective ASC legal team.

Recommendations

5. That the temporary/locum full time PLO (ASC) post (PO4/5) is made permanent and is added to the existing section staffing structure.

1 Purpose of this report

- 1.1 The workload of the Social Care (Legal) Section has significantly increased over the past couple of years, both in terms of children and adult work. This is reflected in the total number of chargeable hours generated by the Section's fee earners.
- 1.2 Due to the expansion of adult social care ("ASC") legal work, the section has employed on a supernumerary basis a locum Principal Legal Officer (ASC) for over two years.
- 1.3 The volume of work in this area of law continues to increase and shows no sign of decreasing.
- 1.4 The purpose of this report is to demonstrate a) the importance of maintaining the current staffing of the ASC legal team and b) that it would be much more cost effective and a more efficient use of scarce Council resources to employ a permanent member of staff rather than continuing to use a locum to help staff the team as the cost of a locum is significantly greater, ie up to £55k pa.
- 1.5 The City Solicitor is consequently asked to approve the following staffing proposal:
 - a) that the temporary full time PO4/5 PLO post within the Ault Social Care team is made permanent and is added to the existing section staffing structure.

2 Background information

- 2.1 The Social Care (Legal) Section provides legal advice and assistance to the Directorates of Adult Social Services and Children's Services and in particular Children and Young People's Social Care ("CYPSC") and Adult Social Care ("ASC").
- 2.2 The majority of the section's work (approximately 85%) relates to public law Children Act 1989 and Adoption and Children Act 2002 proceedings and in particular applications for emergency protection orders, care and supervision orders, discharge of care orders and placement orders. Despite this, Adult Social Care work has increased significant over the past 2-3 years.
- 2.3 Adult Social Care work includes community care, mental capacity (including Court of Protection and Deprivation of Liberty Safeguards work) , mental health, and asylum and immigration law.
- 2.4 The volume of cases handled by the section is extremely high (compared to other local authorities) and appears to be increasing. This trend applies to both childcare and adult work.
- 2.5 The Section is currently made up of the following permanent posts:

- a section head (Dir 45)
- three childcare teams (“A” , “B” and “C”) undertaking predominantly childcare legal work each being line managed by a team leader (Dir40). Each team has essentially 5 FTE PLOs (PO4-5), and three legal assistants (C3);
- **an adult social care team comprised of a team leader (Dir40) and two PLOs (PO4-5 and PO3) .**
- an admin team comprising a team leader (SO1), six FTE administrative assistants (B1), a senior receptionist (B1) and three clerical assistants (A1-3).

- 2.6 The administrative assistant posts are shared equally between the three teams. Two of the PLO posts, the Team B Team Leader post and one of the admin posts are currently job-shares.
- 2.7 The workload of the Social Care (Legal) Section has massively increased over the past couple of years. This increase in workload has been due to the significant and sustained increases both in the number of Public Law Children Act 1989 proceedings instigated and in the volume of adult social care work the Section has to deal with, including work relating to asylum and immigration cases and threats of judicial review concerning complex care packages.
- 2.8 The amount of litigation in the ASC area has significantly increased over recent years since, inter alia, the Mental Capacity Act 2005 coming into force and the establishment of the Court of Protection as a new jurisdiction to deal with adult protection issues. More private practice legal firms have entered this area of law and more and more Counsel Chambers are developing their expertise in this field given it is seen as a growth area in which the jurisprudence and development are still at a relatively early stage.
- 2.9 The number of cases litigated in court has more than doubled over the past two years and the number of duty calls has increased by over 50%. The court cases themselves are very time consuming as the Court of Protection is a new jurisdiction which is still finding its feet. The forms and processes are very complex and bureaucratic and place large demands on the Local Authority.
- 2.10 It should also be noted that the ASC Legal team, despite its name, undertakes work for Children and Young People’s Social Care, including corporate legal advice, threats of judicial review and advice in relation to, inter alia, asylum and immigration, public interest immunity and disabled children.
- 2.11 The effect of the current high workload has been to put significant pressures on staff who already have to deal with the stresses and demands placed on them given the very nature of the team’s work, ie urgent, reactive adult protection work. These pressures are reflected in the number of hours staff are working. All staff in the Adult Social Care Team are working significantly more than their contracted hours.
- 2.12 In addition, all of the current ASC PLOs have high case weightings. Case weightings are regularly reviewed for staff to help allocate new work. The maximum case weighting is “100” points with the usual average being around 70, where one set of legal proceedings is allocated on average 4-5 points. All the ASC PLOs have case weightings in the region of 80-100, reflecting the high volume of work.

- 2.13 The cost consequences for local authorities of making wrong decisions in this area of law are considerable. In the recent case of **Manchester City Council v E, G & F [2010] EWHC 3385 (Fam)**, a “DOLS” case, due to poor practice and mistakes made in relation to the application of the law, Manchester City Council now faces legal bills of approximately £1million.
- 2.14 This report aims to ensure that the Section is able to maintain the excellent service that it provides to Adult Social Care and at the same time, make significant cost savings for the Local Authority.

3 Main issues

- 3.1 As stated above, due to the expansion of adult social care work over recent years, the section has employed a locum Principal Legal Officer (Adult Social Care) for over 2 years.
- 3.2 The volume of work in this area of law is increasing.
- 3.3 It is a poor use of resources to employ a locum rather than a permanent member of staff. It is not appropriate, either financially or managerially, to rely long term on the provision of legal services by locums, particularly given that there is clear evidence that the ASC workload of the section has remained high for some time and shows no sign of abating.
- 3.4 Senior management in Adult Social Care have been consulted in relation to these proposals, ie at a liaison meeting on 22 September 2011. They accept that there is a need for the current temporary PLO post to be made permanent; that it will create costs savings for the Local Authority, be a more efficient use of resources and create a more stable and effective ASC legal team. They also fully accept that the current workload of the ASC Legal team is not likely to decrease given the current economic climate and the significant increase in litigation in this area, ie in terms of Judicial Reviews, Court of Protection applications, public interest immunity, and displacement of nearest relative applications etc
- 3.5 The appointment of a new ASC PLO post (to replace the existing locum PLO) will enable the Section to continue to respond effectively to the significant and sustained increase in ASC legal case work whilst making significant cost savings for the Local Authority, ie up to £55k per annum - see 4.4.4 below.
- 3.6 Structure charts showing the present and proposed ASC Team structures are attached at Appendices 1 and 2 respectively.
- 3.7 The job description for the proposed post are also attached at Appendix 3.

- 3.8 It is not appropriate to meet the increased demands placed on the Section on a permanent basis by outsourcing work to the private sector. This would be inefficient and expensive and not provide the client service areas with the comprehensive, responsive and high quality service they have rightly come to expect. In addition, the “call-off” contract exercise undertaken in the last 2-3 years confirmed that there are only a limited number of external firms in any event willing or able to undertake the legal work provided by the section. This exercise also confirmed that the hourly rates charged by private solicitors are significantly higher than for in-house staff. For example, for adult work, the average hourly rate for advice charged by a private solicitor was £135.00 compared to £76-79 for a PLO.
- 3.9 There is no risk of other existing staff being displaced due to the current proposals.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 There are no specific issues for Ward Members.
- 4.1.2 Legal Services Management Team (LSMT) agreed to these proposals in principle on 14 November 2011.
- 4.1.3 As stated above, senior management in Adult Social Care have been consulted, ie at a liaison meeting on 22 September 2011, and accept that there is a need for the current temporary PLO post to be made permanent; that it will create costs savings for the Local Authority, be a more efficient use of resources and create a more stable and effective ASC legal team. They also fully accept that the current workload of the ASC Legal team is not likely to decrease given the current economic climate and the significant increase in litigation in this area.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no specific implications for minority groups.

4.3 Council Policies and City Priorities

- 4.3.1 This proposal helps support the City Priority to be the “best city for health & wellbeing”, by inter alia, supporting the work of ASC to safeguard and protect the most vulnerable adults in Leeds.

4.4 Resources and Value for Money

- 4.4.1 The total annual cost (ie including on costs) of appointing an additional PLO post will be **£ 41, 739**.
- 4.4.2 The costs will be met by using the monies generated by the Section from its time recording.
- 4.4.3 In addition, it should be noted that a locum is currently being used to cover this proposed additional posts. The cost of this locum is considerably greater than the

cost of a permanent member of staff. Their hourly rate is £44.00. Thus, the cost of employing one locum solicitor is approximately £84,656 per year. This is based on the locum only working 37 hours a week. In reality, given the volume of work the section is dealing with, the locum generally works closer to 40-42 hours a week which adds another £7k - £11.5k to their annual total cost.

4.4.4 Thus, the total annual saving to the Council of employing a permanent member of staff rather than a locum is in the region of £43K – 54.5K.

4.4.5 The section moved to larger premises in October 2010 within Enterprise House. There are no accommodation issues as a locum solicitor is currently employed to undertake the work of the proposed additional permanent PLO.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The proposals are not subject to Call In.

4.6 Risk Management

4.6.1 As stated above, the amount of litigation in the ASC area has significantly increased over recent years. The cost consequences for local authorities of making wrong decisions in this area of law are considerable, eg in the recent case of **E, G & F**, a “DOLS” case, due to poor practice and mistakes in relation to the application of the law, Manchester City Council now faces legal bills of approximately £1million.

4.6.2 It is therefore imperative that ASC continue to receive effective and appropriate legal advice and representation from the ASC Legal Team; that the ASC Legal Team is effectively staffed to meet the demands and needs of its client officers.

5 Conclusions

5.1 The proposal above will help to ensure that the Section maintains the essential legal advice and assistance it provides to Adult Social Care (“ASC”) and meets the challenges ahead posed by the Council and the Government’s Change Agenda.

5.2 The proposal will assist the Section to continue to meet the needs and significant demands of ASC and enable the Council to fulfil its statutory responsibilities to safeguard and protect the most vulnerable adults in the Leeds area whilst also making significant cost savings, ie up to £55k per annum.

6 Recommendations

6.1 The City Solicitor is asked to approve the following:

a) that the temporary full time PO4/5 post is made permanent and is added to the existing section staffing structure.

6.2 The City Solicitor should also note that if approval is given for the above post, the intention is that the current locum in place for this post will cease their employment on the new, permanent member of staff commencing their employment with the section.

7 Background documents

7.1 None.

Appendix One: Adult Social Care Team – Current Structure

Team Leader (Dir 40)

PLO (PO4/5) post covered by temp PLO due to maternity leave

PLO (PO3)

1 locum PLO

Thus, the team leader currently line manages 3 staff (including 1 non-permanent post).

Appendix Two: Adult Social Care Team – Proposed Structure

Team Leader (Dir 40)

PLO (PO4/5) post covered by temp PLO due to maternity leave

PLO (PO4/5) proposed new permanent post

PLO (PO3)

Thus, the team leader will continue to line manage 4 staff but all will be permanent posts.

Appendix 3: PRINCIPAL LEGAL OFFICER (ADULT SOCIAL CARE) : JOB DESCRIPTION AND EMPLOYEE SPECIFICATION

DIVISION
Legal Services

SECTION
Social Care (Legal) **GRADE: PO4/5**

POST TITLE **POST REF NO:**
Principal Legal Officer (Adult Social Care)

POST(S) TO WHICH DIRECTLY RESPONSIBLE
Principal Legal Officer (Team Leader- Adult Social Care)

POST(S) FOR WHICH DIRECTLY RESPONSIBLE
None

PURPOSE OF JOB

To provide an effective, high quality, professional service including advice and representation for Adult Social Services particularly and the City Council generally.

DUTIES AND RESPONSIBILITIES

- 1 To provide legal advice for the Council, its Committees and Service Areas, primarily Adult Social Services and other clients.
- 2 To undertake a personal caseload and to represent Leeds City Council in proceedings in the Magistrates', County (and subject to rights of audience) Higher Courts and before Tribunals and Inquiries.
- 3 To conduct or to make arrangements for the conduct of investigatory and preparatory work as necessary to ensure effective presentation of cases in Court.
- 4 To advise on the implementation of law, regulations and guidance and on the drafting of policies by Adult Social Services and Children and Young People's Social Care.
- 5 To draft Agreements, including Service Delivery Agreements and Health Act Partnership Agreements.
- 6 To draft and prepare Instructions to Counsel and to attend or make arrangements for attendance at Court with Counsel (where this is deemed necessary by the Section Head) and where agreement is given to Counsel being used in place of the postholder.
- 7 To keep up to date with all legal and policy changes affecting the post.
- 8 To work flexibly as a member of a team to cover Court commitments and other work as required.

9	To take personal responsibility under and abide by the Council's Health and Safety Policy.
10	To abide by the Council's Equal Opportunities Policy in the duties of the post and as an employee of the Council.
11	To perform all functions and duties effectively and in accordance with the following: <ul style="list-style-type: none"> - the Council's Policies and Codes of Practice. - the Council's Standing Orders and Financial Regulations. - the Department's Standards, Objectives, Targets and Timescales. - the Department's Quality Procedures.
12	To carry out such other duties within the Department, as from time to time may be reasonably required, which are commensurate with the grade, experience, training and level of responsibility within the Council at your initial place of work or at or from any other of the Council's establishments or at or from any other suitable place of work identified by the Council within the boundaries of West Yorkshire. Your duties may include undertaking work for other authorities under partnership and/or agency arrangements. You may be required to attend meetings, tribunals and courts outside the boundaries of Leeds City Council.

RELATIONSHIPS
The postholder will work with other professional, administrative and support staff in contributing to the provision of a comprehensive legal and administrative service to the City Council. The postholder will have contact with City Council Services Areas and external contacts including Counsel, Courts, Experts, and other witnesses and other parties and their professional advisers or representatives.

PHYSICAL CONDITIONS
The post is based at Enterprise House, 12 St Paul's Street in the centre of Leeds in office accommodation. The postholder may be required to work in any other place of work identified by the Council within the boundaries of West Yorkshire.

SOCIAL CONDITIONS
A 37 hours week is worked but there will be a requirement to work occasionally beyond normal hours. Staff are expected to maintain a standard of dress and presentation compatible with an office environment.

ECONOMIC CONDITIONS	
Grade:	PO4/5 £34,549- £39,855
Annual Leave:	25 days minimum (plus 5 days following 5 years service) plus 8 statutory holidays and 3 extra-statutory days.
Hours:	37 hours per week.
Flexitime:	The Department operates a flexitime system.
Conditions of Service:	Covered by Conditions of Service agreed under the NJC for APT & C staff as adopted or amended by the City Council.

PROSPECTS

Promotion: Whilst there is no automatic progression to any more senior posts, opportunities do exist for advancement and promotion, dependant upon normal staff movements and on the capabilities of the individual postholder.

Training: The Department encourages training both "in-house" and external to meet the needs of the individual and of the Department.

QUALIFICATIONS

Possession of appropriate professional qualification - Solicitor or Barrister (entitled to hold a Practising Certificate) or FILEX.

Job Description Prepared/ Reviewed by:

S BOORMAN
Section Head of Social Care (Legal)
Section

Date: October 2011

Job Description Approved by:

C ALLEN
Head of Development & Regulatory

Date: October 2011

EMPLOYEE SPECIFICATION

Detailed below are the type of skills, experience and knowledge which are required of applicants applying for the post. The "Essential Requirements" indicate the minimum requirements, and applicants lacking these attributes will not be considered for the post. The points detailed under "Desirable Requirements" are additional attributes which would assist the potential postholder. They are not essential, but may be used to decide between candidates where there are no other differences.

SKILLS	Ess	Des	MOA
1 To prioritise and organise workload.	√		AIT
2 To work within time constraints.	√		AIT
3 To work and communicate effectively as a member of a team.	√		AI
4 To relate effectively to people at different levels inside or outside the Council.	√		AI
5 To possess or have the ability to develop IT skills.	√		AI
6 To grasp and assimilate new information quickly.	√		AIT
7 To work with minimum supervision within a supportive environment.	√		AI
8 To adopt a flexible approach.	√		AI
9 Ability to act as advocate on behalf of the Council in Magistrates', County and (subject to rights of audience) Higher Courts and before Tribunals and Inquiries, such advocacy to include substantive contested hearings	√		
10 To resolve a wide range of complex legal problems in a Local	√		AI

11	Government context. To negotiate and liaise with all levels of the Council and other organisations.	√		AI
12	To draft and prepare clear and concise documents, procedures, reports, statements, letters and memoranda.	√		AI
13	To recognise the implications of policy changes and assist in formulating appropriate responses.	√		AI

KNOWLEDGE/QUALIFICATIONS		Ess	Des	MOA
1	Possession of appropriate professional qualification – Solicitor or Barrister entitled to hold a Practising Certificate or FILEX.	√		AIC
2	Sound knowledge of the law and practice relating to Local Government and particularly in relation to Social Services matters.	√		AIT
3	Sound knowledge of relevant litigation law and practice	√		AIT
4	Knowledge of Quality Management Systems.		√	AI

EXPERIENCE		Ess	Des	MOA
1	A minimum of 2 years post qualification experience in dealing with Adult Social Services Law.	√		AI
2	Experience of advocacy, in particular in Social Services matters.	√		AI
3	Experience of working with Quality Management Systems.		√	AI
4	Experience of working as an effective member of a team.	√		AI

BEHAVIOURAL AND OTHER RELATED CHARACTERISTICS		Ess	Des	MOA
1	Willing to abide by the Council's Equal Opportunities Policy in the duties of the post, and as an employee of the Council.	√		AI
2	Willing to take personal responsibility under and abide by the Council's Health and Safety Policy.	√		AI
3	Ability to implement change in a positive manner	√		AI
4	A commitment to provide and develop for clients, high quality legal services.	√		AI
5	A commitment to the effective working of Legal Services and the objectives of Leeds City Council.	√		AI
6	A professional approach and presentation.	√		AI
7	A commitment to own personal development and training.	√		AI
8	An awareness of the sensitive and confidential nature of the work.	√		AI
9	A willingness to work occasionally beyond normal hours.	√		AI
10	An innovative approach to work.	√		AI

METHOD OF ASSESSMENT (MOA)	A = Application Form
	T = Test
	I = Interview
	C = Certificate