

## **Title of report: Update on Children's Legal Team**

**Meeting: Children and young people scrutiny committee**

**Meeting date: Thursday 20 May 2021**

**Report by: Interim Head of Legal**

### **Classification**

Open

This is not an executive decision

### **Wards affected**

(All Wards);

### **Purpose**

Is to provide to the Children and Families Scrutiny Committee, in the light of the Judgement Herefordshire Council v YY [2021] EWHC 749 (Fam) (Herefordshire Council v YY) and the criticisms of the legal service as a result of issues raised in the judgement, a report on the history of the Children's Legal Team, how they work with the Childrens Social Care Service and what improvements to service delivery have been made since March 2020. In addition, this report sets out new protocols/practice processes for the Council to deal with an 'end of life' decision.

### **Recommendation(s)**

**That:**

- a) Note the Contents of this Report**

### **Alternative options**

1. There are no alternative options.

## Key considerations

2. The Council's Legal Service is an in house legal practice and our responsibility is to act for the council as our professional 'client'. The Legal Service is governed by professional regulatory bodies (the Law Society and Solicitors Regulatory Authority) which set practice standards which mean we cannot also advise the public or any other third party, so we have just one client, and that is the council.
3. The Children's Legal Team (the "Team") is one of four (4) teams in Legal Services and advises the council's Children's Social Care service (the "Service") as its professional client.
4. Social work practice does not exist in a legal vacuum; it is subject to numerous guidance and an ever changing regulatory framework. So in supporting the Service to make informed and legally sound decisions it is essential that the Team and the Service consistently build and maintain positive strong and trusted working relationships.
5. Prior to May 2018 the Service was provided with legal advice by Warwickshire Council Legal Services supported by a small in house children's legal team in the council. Following the end of the working relationship with Warwickshire the in house team became the sole legal advisor to the service. At the end of 2019, the then lead solicitor in the children's legal team left the council and so leadership support was provided by way of 2 days support from Warwickshire Council. In March 2020, two senior solicitors in the legal team were appointed on a job share basis as Acting Heads of Law to provide consistent leadership. In April 2020, the council approved a dedicated budget for Legal Services which meant that resources were available to support growing capacity and capability in the team. In April 2021, the redesign of Legal Services was implemented which formalised the structures in each legal team including the children's legal service, with additional roles and development roles including redesigned leadership post, Head of Law and Legal Business Partner Children's Legal Team. It is anticipated during June/July following the outcome of a recruitment process this leadership post will be on a permanent footing. Appendix 1 sets out the new Team Structure.
6. Incorrect Legal Advice – Herefordshire Council v YY 2021
7. This incorrect legal advice was given in June 2019 and concerned the process for consenting to end of life decisions for a looked after child.
8. We have since put in mitigations so this could not happen again. The Team have since put in place training to the legal team, training to the service and there is now a clear legal practice procedure that advice of this nature has to be agreed with the Deputy Monitoring Officer or the Monitoring Officer and/or Counsel before any firm advice is given to the service. We are also formalising this practice procedure into an Escalation Protocol to be agreed with the service so that a written second opinion is necessary in circumstances of a significant nature. When this has been agreed with the Service and the Monitoring Officer we will provide a copy to the Children and Family Scrutiny Committee.

9. In addition, the Team have drafted and developed a Protocol on End of Life Protocol that has been agreed with the Wye Valley Trust. It was also reviewed and signed off by the Leading Counsel representing the Council in the Herefordshire Council v YY 2021 proceedings. A copy of this protocol is attached at Appendix 2
10. Disclosure Issues - Herefordshire Council v YY 2021
11. The judgment criticised the way the council had dealt with the required legal disclosure as part of the usual court proceedings and also the specific order of Mr Justice Keehan relating to disclosure of personnel records of those witnesses in these proceedings.
12. The issues are summarised as follows and are summarised in more detail in Appendix 3 which explains why and how the issues raised occurred.
  - a. Case notes not on MOSAIC
  - b. Legal Services not given access to MOSAIC
  - c. Supervision Notes/121 Meeting Notes not on MOSAIC or Council Nominated Database
  - d. Personnel Files – not held in Council Nominated Database
  - e. Disciplinary Records – not held in Council Nominated Database – Master Files
  - f. Learning Review Records – not held in Council Nominated Database
  - g. Disclosure Order of Mr Justice Keehan not treated by HC with gravity it should have been given
13. In addition, the Monitoring Officer is now raising the need for robust Data Management in the Council to deal with the key issues identified above. In addition, Legal Services are in the process of providing a Disclosure protocol to the Service along with training to relevant personnel in the service.
14. The Children's Legal Team
15. The Team have not had the opportunity to be a proactive service and one which can advise on ways to mitigate risks, and focus on outcomes for children. This has been due to number of historic factors including a closed door to the Service and an unwillingness of the service to engage with the Team. Appendix 4 sets out the particular challenges the Team has faced. New leadership in the Team introduced in March 2020 endeavoured to engage more effectively with the service. This has had significant impact and positive engagement at pace since March 2021 when the Interim DCS and her supporting Interim AD's joined the Council. Appendix 4 also sets out the journey the current team have been on including further improvement work needed.
16. As part of the Improvement work identified arising from the Herefordshire Council v YY 2021 Judgement, the Team now have an Improvement and Resilience Plan to work to and deliver. A copy of this Plan is attached at Appendix 5. A copy of the tracking data

for this Plan, as it develops can be provided to the Children and Family Scrutiny Committee for further consideration.

17. High Risk Cases/Cases of Serious Concern
18. All cases Legal Services are instructed to advise on are risk assessed. Once the Team become aware of significant cases of concern/high risk cases, then as part of a practice protocol they are reported to the Monitoring Officer and the case is then tracked and reported through the council's risk and performance monitoring process. Only cases which the Team have been advised of are captured through this process ; if there are issues in the Service that have not been shared with the Team, or the Team have not been asked to advise, or they are not including in the necessary case planning meetings, then the Team will not be aware of issues of concern.
19. Legal Services were not aware of the significant practice failings identified in the Herefordshire Council v YY 2021 judgment until the Team were instructed on presenting a discharge of care proceedings to the Worcester Family Court and until issues were given in evidence during the court proceedings – certain witnesses were recalled by the court to give further evidence not contained in their substantive witness statements.
20. Now, since March 2021, there are open conversations with the Interim DCS and the Interim AD's and also case conferences to discuss the issues of concern and the open invitation of the Team to look at other issues of concern identified by the service. There is now an opportunity for the Team to provide a proactive, collaborative service and for the Team to become a trusted partner.
21. Journey of a Child – where might legal advice or support be needed.
22. As already discussed, social work does not exist in a legal vacuum. It is subject to numerous volumes of guidance and an ever changing regulatory framework. Perhaps to some social workers this can appear confusing and impenetrable. The primary role of a lawyer and a social worker working together is to present the best interests of the child and so the role of the lawyer is to work with and support the Service with what and when are the key responsibilities of the legal service in the Journey of the Child. Appendix 6 sets out, as an example, what those legal responsibilities might look like.

## **Community impact**

23. Ensuring that the Council as Corporate Parent and the Service in providing the best possible care and safeguarding for children who are looked after by the council are provided with the best legal advice to ensure that the best outcomes are for the children and their families.

## **Environmental Impact**

24. Not applicable

## **Equality duty**

25. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
26. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

## **Resource implications**

27. There are no resource implications with the matters discussed in this report.

## **Legal implications**

28. There are no legal implications with the matters discussed in this report.

## **Risk management**

29. There are no risk implications with the matters discussed in this report.

## **Consultees**

30. None

## **Appendices**

1. Childrens Legal Team – Structure Charts
2. End of Life and Medical Intervention Protocol – Herefordshire Council and Wye Valley Trust.
3. Summary of Disclosure Issues raised in Herefordshire Council v YY 2021
4. Children's Legal Team – Journey of Improvement
5. Children's Legal Team – Improvement and Resilience Plan 2021
6. The Journey of a Child and Legal Advice

## **Background papers**

None