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PUBLIC

To: Members of the Appointments and Conditions of Service Committee

15 September 2021

Dear Councillor,

Please attend a meeting of the **Appointments and Conditions of Service Committee** to be held at **4.00 pm** on **Thursday, 23 September 2021** in Committee Room 1, County Hall, Matlock, the agenda for which is set out below.

Yours faithfully,

A handwritten signature in black ink that reads 'Helen E. Barrington'.

Helen Barrington
Director of Legal & Democratic Services

AGENDA

PART I - NON-EXEMPT ITEMS

1. Apologies for Absence
2. To receive declarations of interest (if any)
3. To confirm the minutes of the meeting held on 10 March 2021 (Pages 1 - 4)
4. Application for a Market Supplement Payment Extension for Child Protection lawyers (Pages 5 - 36)

5. Standby, Sleep-In and Recall to Work Duty Terms and Conditions (Pages 37 - 50)

PUBLIC

MINUTES of a meeting of the **APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE** held on 10 March 2021

PRESENT

Councillor B Lewis (in the Chair)

Councillors R Ashton, K Buttery, A Foster, T Kemp, S Marshall-Clarke, P Smith and M Wall

Officers in attendance – E Alexander, H Barrington, P Buckley, E Crapper, R Edinboro, J Parfremment, J Skila and L Wild

Declarations of Interest

There were no declarations of interest.

1/21 **MINUTES RESOLVED** that the minutes of the meeting held on 10 November 2020 be confirmed as a correct record.

2/21 **APPLICATION FOR THE PAYMENT OF A MARKET SUPPLEMENT TO CHILDREN'S SERVICES CHILD PROTECTION SOCIAL WORKERS** In 2018 the Council agreed a 'growth bid' which enabled children's services to increase the number of social workers in frontline children's teams. The aim of this was to strengthen our ability to achieve best outcomes for children by introducing a new structure for social work teams and reduced caseloads for staff. Subsequently in July 2019, to support with recruitment and retention, a market supplement was agreed for frontline child protection social workers.

Since the implementation of the growth bid and the introduction of the market supplement, the number of established social workers in post had increased and the vacancy rate had reduced from 27% in October 2019 to 17% (45 FTE) in October 2020. As a result of the progress made over the last 12 months the reliance on agency social workers had also reduced from 62 in October 2019 to 34 in October 2020. Whilst there was an ongoing commitment to recruitment, which was demonstrated in the reduced number of vacancies, specific decisions to maintain good quality agency workers had been taken. This enabled the council to support the inexperienced levels of social workers joining us during this period of accelerated growth, with most new social workers being newly qualified and unable to cope with the complexity of the work.

In addition to the market supplement, to support with recruitment and retention, Derbyshire had continued to offer several various routes into social work:

- Frontline (partnership arrangement with Government commissioned organisation);
- Grow Your Own (a route for existing staff to become social workers delivered in partnership with Nottingham City Council and Manchester Metropolitan University);
- Step up to Social Work (Government Scheme, which was a full-time study programme, existing staff can be supported by providing extended unpaid leave to train to become a social worker, scheme was also open to external applicants);
- Return to Social Work Practice (National initiative to encourage professionals to return to practice);
- Social Work Apprenticeships

Whilst the introduction of the market supplement in 2019 and other recruitment and retention strategies had effectively started to reduce the number of vacancies and strengthen Derbyshire's position in the region, there remained a risk that should salaries fall behind neighbouring authorities, individuals who had been supported to train would leave to work outside of Derbyshire County Council.

Section 8 of the Application for the Payment of a Market Supplement proposed to continue the current Market Supplement to Children's Services Child Protection Social Workers at the following rates:

- Grade 9 - £4,000pa
- Grade 10 - £3,000pa
- Grade 11 – £2,000pa
- To pay Grade 12 Practice Supervisors a minimum of point 29 (£37,344) of the Grade 12 (points 28 – 31 pay scale) in order to ensure that all Practice Supervisors were paid more than a Grade 11 Social Worker.

If approved, the proposals would be actioned with effect from 1 July 2021 for a period of two years, with a further review of market conditions taking place towards the end of the two-year period.

Further details of the recruitment and retention rates across localities and the pay rates across the region were contained in the market supplement application attached at appendix 1 to the report. An Equality Impact Assessment attached at appendix 2 to the report, had been undertaken to determine the impact of the market supplement payment to child protection social workers on employees within the nine protected groups, identified under the Equality Act.

As we now had a significantly reduced reliance on agency workers, it was proposed that the market supplement was funded by continuing to reduce the reliance on agency workers and using the natural vacancy rate created by leavers and new starters. With over 260 staff the turnover rate was expected to consistently exceed the 7% required to fund the establishment with market supplement applied. The downward trajectory of agency workers must be maintained and reduced to 0 as the vacancy rate also reduced for the budget target to be reached. If the staffing level as at 31st October 2020 were to be maintained the locality social work budget would be projected to overspend by just under £1m over 12months, the cause of which could be directly attributed to the cost of agency staff in 2020-21 (projected annual spend on agency social workers based on October 2020 numbers would be £2,290,000)

Whilst the vacancy rate remained higher than 7% there was opportunity for a small number of agency social workers to support new starters and inexperienced staff. This would need to be carefully monitored and tracked with a monthly report demonstrating the following in relation to the target.

- the number of established social workers in post
- the vacancy rate to date
- agency social workers in post
- budget projection.

RESOLVED that the committee approve the payment of market supplement for a period of two years.

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FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE

23 September 2021

**Report of the Director of Legal and Democratic Services and the Director
of Organisation Development and Policy**

**Application for a Market Supplement Payment Extension for Child
Protection lawyers
(Corporate Services and Budget)**

1. Purpose

- 1.1 To seek approval for the continuation of the temporary market supplement payments for grade 12 – grade 14 child protection lawyer posts within Legal Services as detailed in the attached appendices.

2. Information and Analysis

- 2.1 Market supplements are a temporary additional payment to the evaluated rate of pay and are only applied where there is clear evidence that the Council's total remuneration package is significantly below the market rate for the role and causing demonstrable recruitment and retention issues and an inability to meet an essential service need or statutory duty.
- 2.2 Market supplement payments are applied for a maximum of two years at which time a full review of market conditions is carried out to establish if the payment should increase, decrease, remain the same or be removed.
- 2.3 Market supplement payments for the child protection lawyers started on 1 April 2018 for two years and were then extended for 18 months from 1 April 2020 to 30 September 2021. A full review of market conditions

has been carried out to support the continuation of market supplement payments for these posts and a business case is provided in Appendix 3.

- 2.4 The team continue to have difficulties in recruiting qualified solicitors or lawyers in this area of work. Continuing the payment is crucial in retaining the current staffing and maintaining the necessary levels of managerial supportive supervision. This is particularly important because the lack of adequate supervision has been identified in national serious case reviews and it is therefore imperative that this level is maintained. As a consequence of recruitment difficulties and the increase in child protection cases, an extensive amount of work has been outsourced to private practice firms, barristers and/or agency solicitors (locums) have been commissioned. These options have significantly increased expenditure for Legal Services and Childrens Services with an external expenditure of nearly £1.8m in 2020/21 in respect of barrister's fees and private practice fees.
- 2.5 Given the year on year increase in child protection legal work and the difficulty in recruiting staff a comprehensive review of the conduct of child protection litigation by Derbyshire County Council has been carried out jointly with Children's Services. The recommendations of this review are key to ensuring a longer-term service delivery model which meets the Council's statutory duties towards the most vulnerable children and young people across the County. A two year market supplement was approved for Child Protection Social Workers by this Committee on 10th March 2021 which is a further reflection that local authority child protection work in all its forms experiences considerable difficulties with recruitment and retention. The work of child protection social workers is intrinsically linked to the work of the childcare lawyers. A consultation process with the lawyers in the child protection legal team was carried out as part of the child protection litigation review and emphasised issues around recruitment and retention. This highlighted the significant impact the market supplement had on their decision to join and commit to the authority. The Review proposes to increase the size of the team and to introduce a structure which provides greater career progression and more opportunities to 'grow our own' solicitors through training programmes and apprenticeships. It is anticipated that if this new structure can be achieved that savings in excess of £350,000 will be achieved.
- 2.6 The DCC Child Protection Litigation Review (hereinafter referred to as the Review) contains a significant number of recommendations regarding the structure of the DCC Legal Services child protection team and the conduct of child protection proceedings. The Review and its

recommendations are being pursued and consideration is being given at Corporate Management Team level as to their implementation. In relation to the market supplement, the Review recommends that this should be continued for two years to support recruitment and retention of staffing pending the undertaking of a job evaluation exercise across Legal Services in relation to the lawyer grades. The revaluation is recommended to reflect the high level of responsibility and influence which the lawyer posts have in the field of child protection.

- 2.7 In the meantime, it is proposed that the current market supplement of £5,000 per annum per lawyer across all levels be continued for a further two years to 30 September 2023 in order to implement and embed the recommendations of the Review. The continuation of the market supplement will ensure that the salary for the posts is competitive, particularly as regards Derby City Council where the salary is £5,558 higher on a permanent basis. The flat rate enhancement is to ensure that there is no disincentive to progress through the grades as envisaged in the Review. The Review proposes that the number of childcare lawyers should be increased with the addition of 8 new posts in order to bring about a minimum saving of £350,000 in respect of external expenditure. In order to have any prospect of being able to not only retain staff but to also recruit additional numbers the market supplement will need to remain in place. Two of the proposed posts are advocacy posts which brings the local authority into direct competition with the Bar for advocates. The Bar is perceived as a more lucrative career path than being an in-house lawyer; the market supplement will therefore be essential to influence experienced advocates to consider local authority employment. A number of Grade 12 solicitors have previously left the employment of the local authority to join the Bar.
- 2.8 The main local competitor in the recruitment market for lawyers is Derby City Council who permanently pay £5,558 per annum more than Derbyshire County Council for their child protection lawyers. Since the onset of the pandemic home working has been introduced across local authorities and given the successes of working remotely we now find we are competing nationally across the recruitment market. A recent advert from a local authority in south east England indicated that “these roles can be fully remote and have the ability for the right candidates to live and work almost anywhere in the UK”. This makes both recruitment and retention more challenging.
- 2.9 The Review has identified that if Legal Services are able to undertake an increased proportion of advocacy and case work in house, a minimum saving of £350,000 per annum will be achieved. In order to

make these savings we need to both retain our existing childcare lawyers and provide an attractive and competitive offer to attract more.

2.10.

A summary of the current application of market supplements within the team is at Appendix 2 and an application (business case) for the continuation of the payment is attached at appendix 3 detailing:

- Why the post is critical to the Council.
- Evidence that all other non-pay avenues have been considered
- Turnover rates.
- Comparator market data.
- How the proposed market supplement amount has been calculated.
- How the proposed market supplement will be funded.

2.11 If approved it is proposed that the proposals would be actioned with effect from 1 October 2021 for a period of two years, with a further review of market conditions taking place six month prior to the end of the two-year period.

3. Alternative Options Considered

3.1 Not to continue with the market supplement payments for grade 12 -- grade 14 posts. However this is not recommended as it is considered it will create a significant risk of loss of knowledgeable and experienced staff and further compound the current issues faced in recruiting to these posts. This in turn is likely to increase the spend on barrister's fees and private practice fees and dependency on locums,

3.2 To agree to the continuation of the market supplement payments for some but not all of the grade 12 – 14 posts. This is not recommended because it could create inequality in the team and may be a factor in lawyers leaving the authority.

4. Implications

4.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

5. Consultation

5.1 The childcare lawyers have been asked for their views regarding the market supplement as part of the wider piece of work relating to retention and recruitment. The consultation highlighted that the

childcare lawyers are very committed to the work which they undertake for Derbyshire County Council and are very conscientious regarding their cases, as of course is necessary given the nature of their work. They are also aware of the prevailing conditions in the market and the potential to earn higher salaries in other parts of the family justice system. Samples of the comments made are detailed below:

- “I do the job because I am committed to the children of Derbyshire, for me the market supplement provides me with the feeling of worth for the job that I do and therefore adds to my feelings of being supported and acknowledged as doing what is on a daily basis an all-consuming role.”
- “If I was working in private practice I would be earning at the very least what the market supplement adds to my current salary and not have as much stress or pressure”
- “If only one lawyer leaves because they can get more money elsewhere that can upset the whole team and the hard work that has been put into developing the team would be lost.”

6. Background Papers

6.1 None .

7. Appendices

7.1 Appendix 1 – Implications.

7.2 Appendix 2 - Summary of market supplement applications

7.3 Appendix 3 - Application for the payment of a market supplement for child protection lawyers

7.4 Equality Impact Assessment

8. Recommendation(s)

That Committee:

- a) approves the application for the payment of a market supplement of £5,000 per annum per lawyer (pro rata), to the Child Protection Lawyer roles at Grades 12 to 14 inclusive;
- b) agrees that the market supplement will take effect from 1 October 2021 for a period of two years; and

- c) notes that a further review of market conditions taking place six months prior to the end of the two-year period.

9. Reasons for Recommendation(s)

- 9.1 The Council's total remuneration package is significantly below the market rate for the role and a market supplement is necessary to address demonstrable recruitment and retention issues and an inability to meet an essential service need or statutory duty.

Report Author: Jane Lakin

Contact details: jane.lakin@derbyshire.gov.uk

Helen Barrington, Director of Legal and Democratic Services, Emma Crapper, Director of Organisation Development and Policy

This report has been approved by the following officers:

| | |
|--|---|
| On behalf of: Director of Legal Services and Monitoring Officer Director of Finance and ICT Managing Executive Director Executive Director(s) | H Barrington Emma Crapper Emma Alexander |
|--|---|

Implications

Financial

- 1.1 The additional costs for market supplement payments will be funded from departmental budgets.

Legal

- 2.1 Applying a market supplement is lawful under the Equal Pay Act 1970 where there is evidence to justify that market factors are the 'material reason' for the post attracting a higher rate of pay than other posts on similar grades. Market forces must account for all the difference in pay and not just part of it. Counsel's advice was sought on the current market supplement procedure and the scheme was deemed to comply with equal pay requirements.

Human Resources

- 3.1 Market supplements should only be used in exceptional circumstances where it can be demonstrated that recruitment/retention difficulties are genuinely related to salary and where all other alternatives have been considered. A full review of the conduct of child protection litigation in Derbyshire is appended to this report.

Information Technology

- 4.1 None arising from the report.

Equalities Impact

- 5.1 Equality considerations were fully considered when the scheme was approved for use and these are included in the application at Appendix 3 in respect of continuation of the market supplement payments. An equalities impact assessment has been completed and is included at Appendix 4.

Corporate objectives and priorities for change

- 6.1

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None.

Appendix 2 – Summary of market supplement applications

| Job title | Grade | No in post | Current salary range £ | Current market supplement p.a. £ | Proposed market supplement p.a. £ | Total salary range if proposed market supplement approved £ |
|-------------------------------------|-------|------------|------------------------|----------------------------------|--|---|
| Principal Lawyer (Child Protection) | 14 | 3 perm | 47,181-52,640 | 5,000 | 5,000 | 52,181-57,640* |
| Senior Lawyer (Child Protection) | 13 | 2 perm | 41,782-45,362 | 5,000 | 5,000 | 46,181-50,362 |
| Lawyer(Child Protection) | 12 | 11 perm | 37,263-40,589 | 5,000 | 5,000 | 42,263-45,589* |

*Salary payments are across the full range.

Appendix 3

APPLICATION FOR THE PAYMENT OF A MARKET SUPPLEMENT FOR CHILD PROTECTION LAWYERS

POST TITLE

Principal Lawyer Grade 14
Senior Lawyer Grade 13
Lawyer Grade 12

AREA/DIVISION

Legal Services

DEPARTMENT

Commissioning, Communities & Policy

Introduction

This application seeks approval to continue the current market supplement payment for a further 2 years for the following roles:

| Job title | Grade | No of posts | Proposed market supplement |
|--------------------------|-------|-------------|----------------------------|
| Principal Lawyer-current | 14 | 3 | £5,000 |
| Senior Lawyer-current | 13 | 2 | £5,000 |
| Lawyer-current | 12 | 11 | £5,000 |

1. Please outline why this post is essential to the Council.

Child Protection lawyers work on cases involving children who are suffering or at risk of suffering significant harm and abuse. This enables the Council to fulfil its statutory responsibilities for the safeguarding of vulnerable children. The role of a child protection lawyer is a challenging one. The role requires a high level of academic qualification and in-work training most often self-funded by the individual. The content of the work is stressful and emotive involving not just reading about child abuse but often having to view images of children with injuries or in neglectful home conditions. The nature of the role means that the lawyers deal with emergencies and contentious court proceedings. It is, of course, right that the local authority is put to proof on its evidence, however the lawyers bare the practical brunt of this relentless challenge both from the courts and those representing parents and children.

Children's Services have acknowledged the problems that they have experienced with recruitment and retention of child protection social workers, thus requiring a market supplement to support their workforce. The same issues relate to the recruitment and retention child protection lawyers.

Our in-house team works efficiently and effectively with Children's Services, providing high quality legal advice given with an understanding of the Council's corporate priorities and objectives. Reliance on solicitors in private practice or locum solicitors is very costly and is acknowledged not to provide the same level of service.

Lawyers (grade 12) advise on the suitability of cases for referral to court and prepare and present applications for court orders, often working unsocial hours in emergency situations. They are supervised by senior lawyers (grade 13), who also deal with more complex cases. The work of the team as a whole is overseen by the principal lawyers (grade 14). They also deal with the most complex cases and support Children's Services management in gatekeeping cases to determine whether the grounds are met to issue court proceedings or commence the formal pre-court process.

Lord Justice McFarlane, President of the Family Division has set out expectations for public law care proceedings in the President's Public Law Working Group Report.

This requires greater oversight by senior managers on cases being issued at court, involving thorough pre-proceedings work, evidence and assessments. Grade 14 lawyers are crucial in providing legal advice and challenge within the process. The grade 12 and 13 lawyers are expected to have a greater involvement with pre-court proceedings work, in addition to the case work they currently undertake.

Lessons learnt at a national level from serious case reviews, support the need for necessary levels of supervision and the ability of the team to act as a critical friend to the Children's Services Department, questioning social work decisions where necessary. The team advise on high levels of risk to children, with the grade 14 lawyers having an oversight on the management of high-risk matters to the Council, such as child deaths, alleged breaches of Human Rights and judicial reviews.

The service is heavily dependent on the goodwill and flexibility of the child protection lawyers. It is preferable for the Council to achieve and maintain a fully staffed team if it is to fulfil its safeguarding responsibilities effectively and efficiently and support and retain the staff involved in this area of work

2. Please provide evidence that consideration has been given to the use of agency workers, contractors, private sector or other providers to undertake the work. This should include the advantages and disadvantages.

As a consequence of recruitment difficulties, both agency solicitors (locums), solicitors in private practice and barristers have been used extensively in recent years. However, there has been a significant increase in child protection cases and also satellite litigation which relates to child protection and has therefore fallen to the in-house team to undertake. In 2018 the number of cases rose by 18% locally and 15% nationally. In 2020 during the lockdown period, cases rose by 20% in the initial period, but have evened out and by the end of the financial period Mar 20 to Mar 21 caseloads have increased by 4.4% on the previous year. This is a continuing upward trajectory of cases year on year that the team is expected to cover within the resource allocation that has not changed to reflect the increase in the work.

There is very little capacity in the external legal market to take on the additional work which we have needed to outsource, as caseloads and timeframe increases are mirrored in private practice. The position has been exacerbated by new and demanding practices and procedures which have been adopted in the courts locally. The point has been reached where private practice firms are overburdened and are unable to take on additional work.

Suitably experienced locum solicitors are also a scarce resource and are increasing their rates and their requirements for flexibility and barristers are not able to run caseloads but can be asked to undertake specific tasks e.g. advocacy and advising in specific meetings.

Expenditure on locum solicitors in the financial year 2017/18 was £64,437, 2018/19 was £106,101 and 2019/20 no expenditure and in 2020/21 was £58,230.

Expenditure on private practice in 2017/18 was £412,306 and 2018/19 was £862,777. Expenditure on private practice lawyers in 2020/21 was £787,461.87. The average hourly rate for locum childcare solicitors is £49 per hour (which is more than double the in-house charge rate of £23.38 per hour (lawyers G12-14). The marketplace for locum lawyers is competitive, with them being able to earn £25.60 per hour extra than an in-house lawyer. Locum solicitors with considerable experience of child protection work have been offered to the local authority at rates of £60 per hour or more.

As indicated above, retaining the work in-house is considered to be more advantageous to the Council than externalising the work in terms of both quality and cost, leaving aside the lack of an available market. Children's Services have direct access to the in-house legal team, where working relationships and practices have been established. The quality of legal provision is supervised in-house and cases are prepared to a consistently high standard. It is a common theme in serious case reviews that access to quality legal advice, overseen by managers is vital in providing critical challenge to Children's Services. This cannot be achieved so effectively by outsourcing to a number of private practice firms.

Using locum solicitors as opposed to private practice solicitors is relatively less expensive, and more readily supplements the work of the in-house team. Locums are a flexible resource which can be readily adjusted to take account of changing levels of demand (particularly in circumstances where demand may decline, although that is not a current consideration in relation to child protection work). However, locum solicitors are readily able to move on at short notice, adding to the burden of the in-house team and there is a shortage of suitably experienced individuals even in the locum market. The use of locums does not build long term resilience in the team.

3. Please provide evidence that consideration has been given to redesigning the job/structure to undertake the work in a different way.

For many years the in-house team has been structured to make the best use of resources by balancing the numbers of qualified solicitors/barristers with less senior officers (paralegals) and support staff. The use of apprentices ('growing our own' lawyers) is being explored with a view to the longer-term needs of the team. Legal Assistants support the Lawyers by undertaking procedural legal tasks, thus freeing the lawyers time to deal with more complex advice matters and court hearings. This has alleviated some pressure and the new proposed structure therefore seeks to balance lawyer and legal assistants to support lawyers in undertaking more advocacy.

The Review mentioned in the cover report proposes an alternative structure to the current staffing and embedding this will be crucial as a potential exit strategy out of the market supplement. The Review recommends an increase in staff across the Section including the use of trainee solicitors and legal assistants to support the work of the lawyers and to provide clear career opportunities and progression with the aim of retaining staff as they are trained. The Review also recommends a regrading/re-evaluation across the lawyer grades which if agreed will be progressed in line with council policy and processes.

Job adverts have been re-designed in conjunction with advice from HR colleagues to maximise the appeal for working for Derbyshire County Council. Advantages, such as flexible working, have been promoted. The use of social media was used to advertise posts. Adverts by other Local Authorities demonstrate that the competition in the marketplace has widened. We are no longer simply competing with other local Council's within the region, but nationally. There have been some changes in working practices as a result of the national lockdowns, particularly as regards the ability to work from home. However, as a result of this, Councils are now seeking to recruit child protection lawyers from anywhere within the UK, increasing the market competition, particularly with salaries in the South of the country being considerably higher.

The development of IT and using court bundling systems as a tool to improve our ways of working is being reviewed. Utilising the apprenticeship scheme to "grow our own" lawyers is under consideration. We have also successfully recruited two trainee childcare lawyers with the expectation that they will qualify and remain with the council in the long term.

The increased complexity of cases means that they remain "live" before the courts for much longer. Child protection court cases should conclude in 26 weeks, however in 2018 cases were running at an average of 38 (with 37% more cases in court this year compared to last year).

As a result of the pandemic the availability of the court to deal with care proceedings work has been significantly reduced and the throughput of cases is therefore drastically impacted. The Lawyers are having to case hold for longer periods and also deal with the additional cases coming into the team. Working from home appears to have assisted in increased capacity of the Lawyers who are working longer hours due to less travel. In this respect efficiency has increased albeit at the cost of a work life balance.

The National Review regarding child protection litigation along with the Derbyshire Review have recently concluded and have been considered by CMT. The proposals within the Derbyshire review have been supported in principle and further work is progressing to increase and restructure the team to reduce external expenditure. An extension to the market supplement will provide the time to embed the recommendations of the reviews and provide the team with the opportunity to recruit and retain staff and to progress a regrade evaluation of the lawyer posts. The Review details the full programme of work which is being undertaken by Legal Services to transform the delivery of child protection litigation. If successful this would mean that a further market supplement would not be required. The Review focuses on how work is carried out within Legal Services but also re-focuses the work with Children's Services to ensure that the balance of responsibility between Children's Services and Legal Services and the interface between the two services is efficient and effective. The outcome of this review has sought to optimise the use of resources and involve consideration of options for the child protection legal structure and deployment of resources.

4. Please provide evidence of turnover rates.

In 2018 the Child Protection Legal Team was unstable following a number of resignations, resulting in an overall turnover rate of approximately 29% . At the same time, the volume of work increased, as did the complexity of cases and satellite litigation.

Over the course of 2020/21 retention of staff has stabilised and the team has had no leavers, although a staff member has reduced their hours to undertake judicial opportunities. The introduction of the market supplement correlates to the period of retention. This is evidence that the market supplement has been successful. As outlined above in the immediate period before the market supplement was introduced 29% of the established solicitor posts left the authority.¹

¹ 2018 Market Supplement report for Cabinet 22/02/18

Although there hasn't been the same level of substantial turnover in the last 18 months, six lawyers have been recruited to existing vacancies and additional posts, which is a significant improvement and demonstrates the positive impact of the market supplement to attract staff. These were to fill previously vacant posts. However, the number of applications for posts are still low and there have been occasions when recruitment has not been possible due to the lack of appropriately qualified and experienced candidates. It is now accepted that the majority of candidates are either newly qualified, looking to change areas of law and have no, or limited, experience of child protection legislation and practice. It is incumbent upon the existing Lawyers to teach and supervise these members of staff. Five of the six new Lawyers are all newly qualified or had little or no experience of this area of law. The other member who is experienced in this field of work previously worked as a locum solicitor for the team and then applied for a permanent post with the authority; indicating that the market supplement was influential in this application.

This puts additional pressure upon the grade 13 and grade 14 managers to ensure staff are trained and supported and that risks are appropriately managed. Considerable resource is being put into training these staff and their retention is vital to the service. In the event that the market supplement was to be removed, then it is likely that staff would seek alternative employment with other local authorities that we compete with to recruit staff, or move to private practice. The loss of any lawyer has a detrimental impact on service provision and represents a loss of the often considerable amount of time invested in training and supporting them.

As indicated above staff recruitment has widened. This means that staff can live and work much further away geographically and locum staff taken on now live in North Lincolnshire, Yorkshire and Northamptonshire. This however works both ways, our staff could be attracted to posts further afield and indeed K are currently advertising and promoting remote working and candidates *"can be anywhere in the UK. Expert IT support is available as is excellent administrative support from a team of legal assistants and secretaries to allow you to focus on a varying and engaging caseload"*

The competition within the marketplace of a narrow pool of lawyers has now widened. It is not yet known what the corporate steer will be on remote working coming out of lockdown, however our advertising campaign offers flexible working, but not remote working. We have an example of a current lawyer expecting to relocate later in the year. At the present time they will not be able to continue to work for us unless we can offer remote working. We will therefore need to recruit to the post having invested eighteen months training them.

There is a national shortage of child protection lawyers, with many Local Authorities having difficulty attracting and retaining staff in this area of law. There are also options to work in private practice or as locum solicitors for an increase in remuneration and in 2018, three Lawyers left us to work in private practice and cited remuneration a reason for leaving. Experienced child protection lawyers are also being actively encouraged and supported by the judiciary to seek judicial posts where daily rates of remuneration are in the region of £500 . A solicitor has recently reduced their hours of employment to undertake a judicial role.

Engagement with other comparative local authorities within the region was attempted to ascertain rates of pay. A local Council were reluctant to provide any data wanting assurances that we would supply it with a copy of the market supplement report, if they shared the information. This demonstrates the competitiveness of the current marketplace.

5. Please provide evidence from exit interviews.

As stated above, in the past year there have been no leavers (although one staff member has reduced their hours to undertake judicial duties) and therefore exit interview data is not available. The situation prior to the introduction of the market supplement is detailed in the earlier reports submitted in support of the introduction of the market supplement and highlighted a 29% turnover rate. The implementation of the market supplement has been successful, in that it has significantly stemmed the flow of staff leaving and ensured we can retain existing staff. The concern is that if the supplement is not renewed, that staff will leave for better salaries in other local authorities. Anecdotal evidence from consultation with employees supports this.

6. Please provide information on the number and quality of responses to job advertisements.

Since March 2018 Legal Services have advertised the below childcare solicitor posts. The table below provides a breakdown of the number of advertisements, applicants, short listings and appointments:

| Vacancy Reference | Media Adverts | Closure Date | Applications Received | Shortlisted | Appointed |
|--------------------------|----------------------------|---------------------|------------------------------|--------------------|------------------|
| Solicitor | | 21/07/2018 | 1 | 1 | 1 |
| Solicitor (2 Posts) | | 21/07/2018 | 3 | 3 | 1 |
| Solicitor (3 Posts) | Local Government Chronicle | 29/04/2018 | 3 | 3 | 1 |

| | | | | | |
|--------|--------------------------------------|------------|---|---|---|
| Lawyer | Law Society Gazette: Public Law Jobs | 18/11/2018 | 2 | 2 | 0 |
| Lawyer | Law Society Gazette | 03/03/2019 | 2 | 2 | 1 |
| Lawyer | Law Society Gazette | 02/06/2019 | 1 | 0 | 0 |
| Lawyer | DCC website | 17/11/2019 | 3 | 3 | 3 |
| Lawyer | DCC website | 15/03/2020 | 4 | 3 | 3 |
| Lawyer | DCC website | 06/09/2020 | 3 | 3 | 0 |
| Lawyer | DCC website | 11/04/21 | 3 | 3 | 1 |

Only 13 applications were received for the 9 recent (11/ 2019 onwards) posts with 12 of the applicants being shortlisted, providing an average application rate of just over one application per vacancy.

In an attempt to increase the number of applicants, we initially increased the media used (advertising in the Law Society Gazette/ Lawyers in Local Government/Public Law Jobs on line). This did not result in any increase in the volume of applicants. The adverts have also highlighted that the role is an interesting and rewarding field of law with a diverse and varied workload and a competitive employment package and flexible working. We have also used social media to run parallel with an advert on the Council's jobs site. We have also included Cilex qualification as an alternative to being a solicitor or barrister to widen the potential pool of applicants so the adverts refer to lawyer rather than solicitor or barrister.

The experience of recruitment is that the number of applicants are low, they are newly qualified, or seeking to retrain. This is with the market supplement in place. The additional burden on managers to train and supervise such staff is significant. The fundamental role of a child protection lawyer is to identify and manage risk to children, therefore the burden on managers to train inexperienced staff cannot be underestimated. It is therefore imperative that the market supplement remains in place to ensure we are able to retain existing staff.

7. Verification of pay or terms and conditions differential between the Council and the market and gender breakdown.

A wide variety of comparison information has been collected by contacting other Local authorities and via the Hay User Group (though those that responded covered a large geographical spread predominantly in the South of England). We have also studied online recruitment sites and made informal enquiries with local comparable employers.

Legal Services Solicitor Pay Benchmarking.

| Authority | Job title | Salary Range | | Difference | Difference |
|-----------------------------|---|--------------|---------|------------|------------|
| | | Min | Max | Min | Max |
| Derbyshire County Council | Lawyer/Solicitor | £37,263 | £40,589 | | |
| | Senior Lawyer | £41,782 | £45,362 | | |
| | Principal Lawyer | £47,181 | £52,640 | | |
| Midlands Comparators | | | | | |
| Authority 1 | Solicitor | £42,821 | £45,859 | £5,558 | £5,270 |
| Authority 2 | Solicitor Grade 11-13 (solicitor roles advertised as £46,203 depending on experience) Childcare new appointees MS of 10% starting salary | £32,979 | £46,203 | -£4,284 | £5,614 |
| Authority 3 | Qualified Lawyer Looking at MS | £39,880 | £42,821 | £2,617 | £2,232 |
| Authority 4 | Lawyer Plus £3k starter incentives for applicants over 3 yrs | £35,745 | £43,857 | -£1,518 | £3,268 |

| Authority | Job title | Salary Range | | Difference | Difference |
|-------------------------------|---|--------------|---------|------------|------------|
| | PQE, plus £2,400 after 2 years continuous service | | | | |
| Authority 5 | Solicitor | £43,380 | £49,163 | £6,117 | £3,801 |
| Authority 6 | Lawyer | £37,000 | £43,500 | -£263 | £2,911 |
| | Senior Lawyer | £43,500 | £49,500 | £1,718 | £4,138 |
| Authority 7 | Solicitor grade 12 Plus £5,000 market supplement | £39,880 | £43,857 | £2,617 | £3,268 |
| South East Comparators | | | | | |
| Authority 8 | Lawyer | | £43,680 | | £3,091 |
| Authority 9 | Lawyer | | £44,790 | | £4,201 |
| | | | | | |
| Authority 10 | Lawyer (depending on experience) | £42,000 | £50,000 | £4,737 | £9,411 |
| | Senior Lawyer | £50,000 | £55,000 | £8,218 | £9,638 |
| Authority 11 | Childcare Team Lawyer | £35,382 | £39,246 | | |
| | Lawyer | £40,227 | £44,619 | £2,964 | £4,030 |
| | Senior Lawyer | £45,734 | £51,725 | £3,952 | £6,363 |
| | Principal Lawyer | £53,018 | £69,514 | £5,837 | £16,874 |
| | Senior Principal Lawyer | £61,463 | £69,514 | | |
| Authority 12 | Lawyer Level 1 | £32,910 | £35,745 | | |

| Authority | Job title | Salary Range | | Difference | Difference |
|-------------------------------|---|---|-------------------------------|------------|------------|
| | Lawyer Level 2 | £36,922 | £39,880 | -£341 | £287 |
| | Lawyer Level 3 | £40,876 | | | |
| | Senior Lawyer (manages teams of Level 3) | £49,765 | £54,566 | £7,983 | £9,204 |
| Authority 13 | Solicitor | 11 £36,922 | 12 £43,857 | -£341 | £3,268 |
| | Senior Solicitor | Hay A £47,351 | Hay C £59,222 | £5,569 | £13,860 |
| Authority 14 | Principal Solicitor | Hay D £60,314 | Hay D £64,214 | £13,133 | £11,574 |
| | Senior Lawyer Market forces some roles £2,500 | £45,591 | £48,531 | £3,809 | £3,169 |
| | Principal Lawyer Market forces some roles £4,000 | £48,531 | £51,622 | £1,350 | -£1,018 |
| Authority 15 | Solicitor Progression M1/5 | £32,234 | £48,804 | -£5,029 | £8,215 |
| | Senior Solicitor M5 | £45,859 | £48,804 | £4,077 | £3,442 |
| | Principal Solicitor M7 | £55,100 | £58,092 | £7,919 | £5,452 |
| North East Comparators | | | | | |
| Authority 16 | Senior Legal Officer Career grades (Levels 1,2 and 3) | 9 - £32,234 10 - £35,745 11-£39,880 | £34,728 £38,890 £42,821 | £2,617 | £2,232 |

| Authority | Job title | Salary Range | | Difference | Difference |
|--|---|--------------|---------|------------|------------|
| | | | | | |
| | Legal Manager | £43,857 | £46,845 | £2,075 | £1,483 |
| North West Comparators | | | | | |
| Authority 17 | Assistant Solicitor Childcare (Qualified solicitor) | £43,857 | £48,797 | £6,594 | £8,208 |
| Authority 18 | Solicitor – Children | £47,830 | £50,784 | £10,567 | £10,195 |
| Authority 19 | Group Solicitor – Social Care and Education | £43,857 | £46,845 | £6,594 | £6,256 |
| Welsh Authority Comparators | | | | | |
| Authority 20 | Solicitor (safeguarding children) | £39,880 | £42,821 | £2,617 | £2,232 |
| | Senior Solicitor/Team leader/Advocate | £49,795 | £56,432 | £8,013 | £11,070 |
| LG Lawyer salary survey 2020 – Children’s Services | Lawyer | £38,935 | £44,636 | £1,672 | £4,047 |
| | Senior Lawyer | £42,555 | £47,462 | £773 | £2,100 |
| | Principal Lawyer | £49,606 | £53,314 | £2,425 | £674 |
| Non Child Protection roles | | | | | |
| North East | Lawyer – Civil Litigation | £39,880 | £43,857 | | |
| Midlands | Solicitor Litigation and Property | £36,922 | £42,821 | | |

| Authority | Job title | Salary Range | | Difference | Difference |
|--|------------------|--------------|---------|------------|------------|
| LG Lawyer salary survey 2020 – average all | Lawyer | £38,879 | £44,549 | | |
| | Senior Solicitor | £41,891 | £45,441 | | |
| | Principal Lawyer | £49,651 | £53,592 | | |

It will be noted from the above that research into other councils' pay rates for Child Protection lawyers has shown that, based on the top end of the salary range, the average pay rate across other councils for the three levels of role, Solicitor, Senior Solicitor and Principal Solicitor, are £4,546, £5,273 and £7,762 higher respectively than for the equivalent roles at Derbyshire. The averages were calculated based on data from 23 councils for Solicitor roles, 12 for Senior Solicitors, and 5 for Principal Solicitors. The 2020 Local Government salary survey reported the average salaries being advertised for these roles being £44,636, £47,462 and £53,314 respectively, £674, £2,100 and £4,047 higher than Derbyshire. The ability for lawyers to work entirely remotely, covering court hearings remotely has meant that south eastern wage levels have become very relevant.

Private practice remuneration, particularly for experienced lawyers will be higher as many firms offer bonus payments and partnership opportunities.

Additional information has been provided in relation to the market for child protection lawyers from the 'Local Government Lawyer Recruitment Market Report 2021'.² This report is based on 2005 local authority legal jobs published on the public law jobs board between 2017 and 2020. The report highlights the research conducted by the Local Government Lawyer that "recruitment and retention was the biggest single issue facing local authority legal departments. The vast majority (87%) of the 76 heads of legal who took part in the Legal Department of the Future research said that the recruitment of staff was "difficult" with 39% describing it as "very difficult" – and the issue of the pay differential between public and private legal work was a problem when attracting talent to local government!". The report notes that the impact of the public sector pay freeze contrasted sharply with private practice profits and the sector recording its second highest July revenue figure on record. The report also points out that local authorities are advertising positions without any regional requirements meaning that the market is even more competitive with local authorities in London and the South East welcoming applications from across the country and inviting applicants to work fully remotely. Derbyshire County Council will therefore have to cope with the London/ South East salary divide. The report includes a section regarding salaries by practice area and the following observation is made in relation to childcare lawyers, "still in high demand, childcare lawyers continued to be offered supplements at high rates, with 8% of all positions advertised including supplements ...The rate at which childcare roles were advertised rose too, with a quarter of all roles advertised on Public Law Jobs relating to childcare law (compared with 21% in 2019)."

The Council's Legal Services has a predominantly female population of lawyers, consisting of an overall total of 85% female. This is a pattern reflected across the Hay Group, with the majority having an overall female percentage population profile between 73-85% female, with Derbyshire County Council having the highest.

The cessation of the market supplement is likely to result in lawyers leaving for better remuneration elsewhere and a reversion to the instability seen within the team prior to the market supplement being introduced in 2018. This would lead to a significant depletion in grade 12, 13 and grade 14 members of staff, most of whom are female (only 1 male out of 15 staff members). The retention of the market supplement would ensure that all staff are encouraged to remain with Derbyshire County Council.

8. Amount of market supplement to be paid

² [Public Law Jobs Market Report 21.pdf \(localgovernmentlawyer.co.uk\)](#)

Based on the benchmarking data gathered, the value of the market supplement requested for Grade 12, 13 and 14 childcare solicitors is £5,000 per annum, as currently.

This reflects the clear demarcation between each grade and allows for meaningful career progression that is reflected in the salaries for each grade i.e. no overlap in remuneration in the grades.

9. Likely effectiveness of market supplement

Informal consultation from the existing team of child protection lawyers reveals that they are more likely to remain committed to Derbyshire County Council if the £5000 market supplement is renewed. There is clear evidence that the market supplement has a significant positive impact on retention of staff and on their sense that the council is supportive of them and recognises the level of commitment which the role requires

The supplement should also ensure the department remains competitive when recruiting in an increasingly competitive marketplace. This will make our child protection lawyer roles more attractive and therefore more likely to attract applicants. This is particularly important given that the county council are seeking to increase the number of staff in the team and compete for the staff within a highly competitive market.

A decision not to review the market supplement is likely to have a detrimental impact on the team, with leavers likely. The team is currently dealing with 205 child protection cases. In the event that there was no internal resource to absorb these cases an alternative solution would need to be identified, in order for the Local Authority to meet its statutory responsibility to protecting those children. There are currently 42 cases outsourced to external solicitors, as a result of the increase in care cases and it is becoming increasingly difficult to find external law firms that can take on these cases. It is unlikely that an alternative provision would be readily available.

47 cases were outsourced to agent solicitors in private practice in 2020 to 2021 at a total cost of £ 787,461.87. The average cost of one case is therefore £16,754.50 (albeit these cases may not have fully concluded so this may not be the total cost per case) On this basis the estimate cost of outsourcing all current cases of 247 would be at least £ 4,138,361.50 .

10. Analysis of likely impact of market supplement.

The actual cost of the current team is £1,246,767.00 including the current market supplement and on costs per annum. The estimated cost of outsourcing all cases to private practice lawyers is £4,138,361.50.

The in-house legal team is consistently supervised and managed and has strong relationships with the client department, providing them with a high quality service. It is accessible and responsive to the needs of the client through a service level agreement. The potential loss of this service, or a significant reduction in this service would have a direct impact on Children's Services and their ability to meet the Council's statutory obligations, take Child Protection cases to court effectively and to have a direct link to legal advice. It may have a direct consequence on their retention of staff, with social workers potentially leaving for jobs where there is an in-house legal team to support them.

The ability to retain existing staff and to seek to attract new child protection lawyers wherever possible should enable the Council over time to significantly reduce the current cost of locum solicitors and cases going out to private practice. This is provided that DCC vacancies attract a reasonable level of interest. This will be challenging in the current market but there is clear evidence that the market supplement has assisted in the retention of staff.

Revocation of the temporary market supplement payment at this stage is likely to have a serious impact on morale and is likely to increase the rate of turnover of staff to the point where it may no longer be viable to provide anything more than a commissioning service. However, given the limitations of the market, as described above, even if this was to be the preferred route it would be extremely difficult to achieve and would also require a long lead in period.

Appendix 4

Derbyshire County Council **Equality Impact Analysis Record**

| | |
|---------------------|---|
| Service Area | Legal and Democratic Services |
| Service or function | Child Protection Lawyer Market Supplement |

Stage 1. Prioritising the analysis

Why has the policy, practice, service or function been chosen?

The Equality Impact Assessment (EIA) was undertaken to establish what impact the extension of the market supplement payment to Child Protection Lawyers would have on the workforce. It will also identify if the proposals have a direct or indirect negative impact on employees within the nine protected groups, identified under the Equality Act.

What if any proposals have been made to alter the policy, service or function?

It is proposed to continue to make a market supplement payment of £5,000 to grade 12 and grade 14 Childcare Lawyer posts within Legal Services for a period of 2 years. Market supplement payments for the Child Protection Lawyers started on 1 April 2018 for two years, then extended for 18 months from 1 April 2020 to end on 30 September 2021.

What is the purpose of the policy, practice, service or function?

The proposal to continue paying the current market supplement payments is based on assessment of the vacancy rate, benchmarking with neighbouring authorities and recruitment and retention challenges, and the requirement to continue to meet an essential need and statutory duty. The aim of the market supplement is to support with recruitment and retention difficulties, maintain and increase the established workforce and reduce the reliance on external resource and agency workers.

Stage 2. The scope of the analysis — what it covers

The proposed market supplement payments will apply to all Child Protection Lawyers. The EIA will assess the impact to the following nine protected characteristics in the Equality Act as well as any impact to part-time employees:

- Age
- Disability
- Sex
- Sexual Orientation
- Race
- Religion or belief
- Marriage and civil partnership
- Pregnancy and maternity
- Gender Reassignment

Stage 3. Sources of data

| Source | Reason for using |
|---|--|
| SAP Workforce and Equality Data at April 2021 | Identify % of protected groups in these roles establish if the market supplement proposals have any positive and/or negative impact. |

Stage 4. Analysing the impact or effects

There are 41 Senior Solicitors/Lawyers, Solicitors/Lawyers and Trainee Solicitors within Legal Services. Of these 16 receive a Market Supplement, due to being Child Protection Lawyers/Solicitors and 25 do not. The analysis below considers the proportion of the following groups with a protected characteristic:

- All Solicitors/Lawyers within Legal Services
- Solicitors/Lawyers in Child Protection roles which attract a market supplement
- Solicitors/Lawyers in roles not attracting a market supplement.

| Protected Group | | | |
|---|-------------------------------|---|---|
| Age: 50+ | All Solicitors/Lawyers | Solicitors/Lawyers receiving a market supplement | Solicitors/Lawyers not receiving a market supplement |
| | 11 (27%) | 3 (19%) | 8 (32%) |
| Findings: 19% of employees receiving a market supplement are over 50, compared to 27% of all Solicitors/Lawyers. 32% of employees not receiving market supplements are over 50, which is a slight over representation, however there is no significant negative impact on this group. | | | |
| Protected Group | | | |
| Age: 16-24 | All Solicitors/Lawyers | Solicitors/Lawyers receiving a market supplement | Solicitors/Lawyers not receiving a market supplement |
| | 0 | 0 | 0 |
| Findings: The time taken to fully qualify as a solicitor/lawyer means that it would be unusual to find this age group highly represented in this professional group. The youngest member in this group is aged 26. There is therefore no significant positive or negative impact on this group. | | | |

| Protected Group | | | |
|---|-------------------------------|---|---|
| Employees declaring a disability | All Solicitors/Lawyers | Solicitors/Lawyers receiving a market supplement | Solicitors/Lawyers not receiving a market supplement |
| | 7 (17%) | 1 (6%) | 6 (24%) |

Findings:

The proportion of employees receiving a market supplement who are disabled is lower than for employees who are not in receipt of one. Continuing to pay the market supplement will therefore have a slightly more positive effect on employees without a disability. It should be noted that these figures are based on self declarations by employees and information wasn't available for 2% of all Lawyers/Solicitors and 6% of the group receiving a market supplement.

Protected Group

| Protected Group | | | |
|-----------------------------|-------------------------------|---|---|
| Race - BME employees | All Solicitors/Lawyers | Solicitors/Lawyers receiving a market supplement | Solicitors/Lawyers not receiving a market supplement |
| | 6 (15%) | 1 (6%) | 5 (20%) |

Findings:

Due to the small number of employees, to maintain anonymity, all employees declaring an ethnic origin other than white British have been included in the 'BME employees' group above. 15% of all Solicitors/Lawyers are BME, and 78% white British. 6% of employees receiving a market supplement are from a BME origin, and 88% white British. 20% of those not receiving a supplement are BME and 72% white British. Proportionally more employees in Child Protection solicitor/lawyer roles are white British and therefore the market supplement has a more positive impact on these employees. Information on ethnic origin was not available for between 6 – 8% of the employees in all of the groups above. The underrepresentation of BME employees in the Child Protection field is an area for further investigation, however the implementation of the market supplement does not have a significantly adverse effect on BME employees.

| Gender (Sex) | All Solicitors/Lawyers | Solicitors/Lawyers receiving a market supplement | Solicitors/Lawyers not receiving a market supplement |
|---------------------|-------------------------------|---|---|
| Female: | 35 (85%) | 15 (94%) | 20 (80%) |
| Male: | 6 (15%) | 1 (6%) | 5 (20%) |

Findings:

Child Protection Lawyers within the council are predominately female. Payment of a market supplement has a proportionately more positive impact on women, with 94% of all those receiving a market supplement, and 85% of all solicitors/lawyers, being female. 43% of all female Lawyers/Solicitors receive a market supplement, against 17% of male Lawyers/Solicitors, due to the specialisms of the roles the employees are working in.

Protected Group – Sexual Orientation

Findings:

78% of all Lawyers/Solicitors have stated they are Heterosexual, 15% would prefer not to say and there is no data available for 7%. Therefore, no adverse or positive impact can be concluded from the data available in relation to sexual orientation.

Protected Group

| Religion or Belief | All Solicitors/Lawyers | Solicitors/Lawyers receiving a market supplement | Solicitors/Lawyers not receiving a market supplement |
|--------------------|------------------------|--|--|
| Christian | 20 (49%) | 11 (69%) | 9 (36%) |
| Minority religion | 3 (7%) | 0 (0%) | 3 (12%) |
| No religion | 8 (20%) | 3 (19%) | 5 (20%) |
| Not declared | 10 (24%) | 2 (13%) | 8 (32%) |

Findings:

The majority of employees receiving a market supplement are Christian (69%), a higher proportion than in the wider group of Solicitors/Lawyers (49%). Employees with no religion are proportionately represented in all groups at around 20%. 24% of employees in the wider group have not declared their religion or belief, and make up a higher proportion of those not receiving a market supplement (32%) than those who are (13%). 3 employees have declared a minority religion and all these employees are working in specialisms other than Child Protection. Payment of the market supplement has no significant adverse effect on employees with a minority religion or belief, although greater understanding of the representation of minority groups across the legal

specialisms and reasons for under or over representation would be an area for future investigation.

Stage 6. Main conclusions

Analysis of the above findings demonstrates that the proposed continuation of the market supplement payment would not significantly disadvantage any of the protected groups.

Although the numbers are relatively small, the above analysis does suggest a further work to fully understand the representation of protected groups across the legal specialisms and reasons for this, would be beneficial.

Although there are gaps in the data, with no statistics for marriage and civil partnership, pregnancy and maternity or gender reassignment, it is not envisaged that there will be any adverse impact to employees in these groups. It is noted that employees on maternity/ paternity leave should have any changes communicated to them appropriately.

Stage 7. Ways of mitigating unlawful prohibited conduct or unwanted adverse impact, or to promote improved equality of opportunity and/or good relations.

Continued maintenance of a robust job evaluation process which is the basis for ensuring the pay structure is fit for purpose and can provide a defence to discrimination and equal pay claims.

The Equality Impact assessment will be shared with trade union colleagues and officers to ensure that all views are considered and reflected in the final document.

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FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE

23 September 2021

Report of the Director of Organisation Development and Policy

Review of standby, sleep-in and recall to work duty terms and conditions

1. Purpose

- 1.1 To seek approval to apply revised terms and conditions in relation to standby, sleep-in and recall to work (SSR) duty.

2. Information and Analysis

- 2.1 As a result of issues being raised by trade unions in 2020, the Council agreed to review the terms and conditions of SSR duty. The review aims to provide a clear set of terms and conditions relating to all aspects of SSR duty. The level of pay and remuneration aims to be fair for all employees undertaking SSR duty reflective of the length of duty being undertaken.
- 2.2 The Council has undertaken a process of employee, manager and trade union engagement through a series of working groups and workstream meetings since January 2021. A summary of feedback from the engagement sessions can be found in appendix 2.

- 2.3 Benchmarking across a number of other councils has been carried out to inform the review. A summary of benchmarking can be found in appendix 3.
- 2.4 The Council has undertaken analysis of SSR duties and working time data from 1 April 2019 to 31 March 2020 to take into account SSR duty in a non Covid impacted year. Analysis has shown that the level of standby and sleep-in duty payments during the last two financial years is consistent and therefore numbers of standby and sleep-in duty claims does not appear to have been significantly affected by the Covid pandemic.
- 2.5 The table below shows the total number of claims within the reference period and cost of claims based on 2020/2021 duty rates.

| Type of duty | Current duty rate | Number of claims | Total cost based on 2020/21 duty rates |
|---------------------|---|------------------|--|
| Standby duty | £27.02 | 32,174 | £1.012m |
| Sleep-in duty | £27.02 | 10,327 | £0.279m |
| Recall to work duty | £27.02 <i>(included the first 30 mins working time)</i> | 141 | £0.004m |
| Totals | | 42,783 | £1.286m |

- 2.6 Current terms and conditions allow for standby duty payments undertaken on Saturdays and Sundays to be eligible for two claims if they cover a 24-hour period.
- 2.7 The total pay bill spend on SSR duties is estimated at £1.3m based on the total of claims made within the reference period

Summary of proposals

- 2.8 On 6 September 2021, the Council and Joint Trade Unions reached a collective agreement on a revised set of terms and conditions for SSR duty, that meet the objectives of the review. The revised set of terms and conditions are as outlined below:
- 2.9 Standby duty - Duty payment rates of £27.02 will apply for the first 8 hours of standby duty, with an additional basic rate payment of £3.38 for each two-hour block thereafter up to 24 hours, providing payment for a 24-hour period at £54.06. The payment for any 8 or 2-hour block of time that spans into or out of a bank holiday will receive enhancement to double the duty

payment rate. Any 8 or 2-hour block of time that is not within the bank holiday period would be paid at the basic duty payment rate.

- 3.0 The rationale for having a minimum period of standby of 8 hours is to provide a payment that is reflective of the potential sacrifice if an employee were to be called out. For example, employees may be on standby for much shorter periods of time however they need to make themselves available for a day's work if required, therefore this impacts their ability to make social plans. The estimated additional cost to the council pay bill for the revised terms and conditions is estimated at £0.216m.
- 3.1 Sleep-in duty – It is proposed to maintain a flat rate sleep-in duty as the period of sleep-in duty is relatively static i.e. between 8-10 hours. In order to maintain parity with the proposed change to standby duty payment rate, the basic duty payment rates for sleep-in duty will be increased to £30.40. Where sleep-in duty spans into or out of a bank holiday, the duty will be enhanced to double the basic duty payment rate. The estimated additional cost to the Council pay bill for the revised terms and conditions is estimated at £0.046m.
- 3.2 Recall to work - The extent that recall duty payments are utilised within the Council is low with only 141 in 2019/20 reducing to 22 claims in 2020/21. It is proposed to reflect the following changes;
- 3.3 The Council will remove the requirement to include the first 30 minutes working time within the duty payment. Based on an average pay rate for 141 claims, the additional cost would be £1.1k. Actual cost is lower due to inaccuracy of claims being made. Working group feedback identified employees have incorrectly claimed from the moment they start work rather than deducting the first 30 minutes from the claim.
- 3.4 Travel time is included in the duty payment rate of £27.02 for those who are required to travel before they start work. This is offset by the removal of the first 30 minutes working time rule above.
- 3.5 Where there is not a requirement to travel before starting work, recall will be paid at a proposed reduced rate of £20 per recall. The reduced rate is offset by the removal of the first 30 minutes working time rule.
- 3.6 Duty payment rates as outlined within the report will be applied from 1 November 2021 and will not be subject to annual pay award for 2021/22. SSR duty payments will be subject to future pay awards as of April 2022. Payments for duties relating to Bank Holidays will be backdated to 1 December 2020

3. Alternative Options Considered

- 3.1 During the review the Council has considered a range of different options. These included lower duty payments for employees who are on duty for shorter periods of time i.e. those on less than 8 hours would receive a proportionate payment based on the number of hours undertaking the duty. This would not have recognised the sacrifice and impact on employees personal and social life if there is a requirement to respond to a call. There would have also been equality impacts on female workers who tend to undertake standby duty for shorter periods of time and were therefore discounted.
- 3.2 Lower 24-hour standby payment rates were considered through consultations to limit a 24 hour payment to £50.06 which is lower than the current payment duty rate. However, this proposal would have detrimental impact on service cover arrangements would have disincentivised employee engagement in standby rota arrangements and was therefore amended during the consultation process.
- 3.3 Various options were considered in respect of how to enhance duties that are undertaken on a bank holiday, with initial proposals only enhancing the duty that commences on the bank holiday. This was deemed to be less equitable for those employees that commence the duty on the day before the bank holiday where the duty runs into the bank holiday, in some cases for a significant part of the day. Alternative proposals were developed to recognise the hours that fall within the bank holiday with any time that falls within the bank holiday receiving the bank holiday enhancement.

4. Implications

- 4.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

5. Consultation

- 5.1 The Council has consulted with employee and manager representatives along with the recognised Joint Trade Unions on SSR terms and conditions.
- 5.2 The Council has reached a collective agreement with the Joint Trade Unions to vary the Council's SSR terms and conditions.

6. Background Papers

6.1 None

7. Appendices

7.1 Appendix 1 – Implications.

7.2 Appendix 2 - Working group engagement feedback.

7.3 Appendix 3 - Benchmarking analysis.

8. Recommendation(s)

That ACOS agree to:

a) implement revised terms and conditions for standby, sleep-in and recall to work duty with effect from 1 November 2021.

b) backdate payment for the revised terms and conditions for bank holiday duty payment to 1 December 2020

9. Reasons for Recommendation(s)

9.1 The Council feels that the recommendation meets the objectives of the review and provides a revised set of terms and conditions that are fair and reflective of the length of duty being undertaken.

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Implications

Financial

- 1.1 Implementation of all the recommended terms and conditions relating to standby, sleep in and recall to work would increase the total annual pay bill by an estimated £0.33m including on costs based on current service arrangements.
- 1.2 Under the arrangements of the collective agreement, SSR duty spend of £1.3m will not be subject to provision for pay award for 2021/22. The pay award for 2021/22 is anticipated to be 1.75%, which equates to £0.028m including oncosts.
- 1.3 The Council has committed to backdating any changes to bank holiday standby payment to 1 December 2020. To treat all employees equally, it is proposed that bank holiday payments are backdated for all standby and sleep-in and recall to work duty payments. The anticipated additional cost is £0.056m including on-costs.
- 1.4 Any increases to departmental pay bills as a result of changes to SSR terms and conditions will need to be met from existing departmental budgets.

Legal

- 2.1 Consideration has been given to potential legal challenge from the proposals outlined in this report. As the proposed duty payment rate for standby would remain the same for periods up to 8 hours, with increases only applicable where employees are required to undertake standby duties in excess of this, there is no clear detriment to any employees. Indirect discrimination based on sex would require a clear detriment to be identified. There is no detriment to female employees undertaking standby duty up to 8 hours as the pay rate will remain the same.
- 2.2 Where predominantly male roles receive a higher rate of standby duty payment it may create equal pay liability. However, the standby duty is not work and if it were to be considered work for the purpose of equal pay, the Council may have a material factor defence of ensuring payments reflect the length of time the employee is on standby. It is not deemed to be a bonus or additional payment.

- 2.3 The recent Supreme Court decision in *Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad and another (t/a Clifton House Residential Home) [2021]* confirmed that workers on sleep-in shifts were only entitled to the national minimum wage in respect of hours in which they were required to be awake for the purposes of working, not for the whole shift.
- 2.4 The roles that require sleep-in duties to be undertaken are predominantly female however, sleep-in and standby duties have different requirements and are arguably not comparable. Standby duty enables an employee to remain at home unless required to work. Sleep-in duties require an employee to sleep at the place of work and be available during the night should any incidents arise. All of those who carry out sleep-in duties will receive the same payment therefore, male and female employees will receive equal pay.
- 2.5 The suggested amendments to the recall policy do not appear to pose any significant legal risk. Recall is not a contractual requirement and is only payable when an employee is required to return to work and agrees to do so. This is not a scheduled rota and is only used in emergency situations. It is not commonly used across the Council and there is not clear evidence that male or female roles predominantly receive recall payments.

Human Resources

- 3.1 The Council will develop updated guidance within the Working for Us booklet which will be communicated through Our Derbyshire to employees in October 2021. A series of briefing sessions to managers will be made available throughout October 2021, implementing new terms and conditions as of 1 November 2021. Backdated pay for bank holiday working will be included within November 2021 pay for current employees who are covered by the agreement.

Information Technology

- 4.1 HR Services will develop SAP updates to show the revised duty payments on payslips.

Equalities Impact

- 5.1 Analysis of standby, sleep-in and recall workforce data confirms that all employees regardless of protected characteristics will not be disadvantaged as a result of the revised terms and conditions.
- 5.2 All employees undertaking sleep-in duty will benefit equally from the proposed increase in sleep-in duty payments rates regardless being identifiable within a protected characteristic or not.
- 5.3 Standby is predominately undertaken by male employees within the Council with 62% of claims being made by males, compared to 38% female. Analysis shows that the revised terms and conditions will not disproportionately benefit any group of employees on the basis on their gender or other protected characteristics. 75% of female claimants will benefit from the revised terms and conditions compared to 70% of males.
- 5.4 Recall to work payments are claimed by relatively few employees, with two thirds of claims being made by male employees. The impact of revised terms and conditions for recall to work duty is therefore negligible.

Working groups engagement feedback

Six working groups were held during March 2021 to obtain feedback from managers and employees on standby, recall and sleep in terms and conditions as part of the SSR review. The feedback from all sessions has been collated and is combined below.

Standby duty

- That standby rotas are currently covered either as a contractual requirement of the role or voluntarily and these are vital to enable out of hours cover arrangements to be managed
- It can be a challenge to get volunteers for bank holiday standby cover, and these are often reliant on goodwill
- Pay for bank holiday standby cover particularly during the Christmas period was raised as an issue, with a suggestion to consider enhancements to bank holiday standby duty payments to tackle this
- The current limit of being able to make a maximum of 9 claims per week due to Friday morning and Monday evenings being linked was put forward as an issue
- The level of payment related to the length of duty was raised as an issue. Although concerns were raised that employees with shorter standby period will receive less money and the service implications of employee engagement in voluntary standby rotas as a result of time related payment rates.
- It was felt that the level of payment is not sufficient or reflective of the level of sacrifice
- Some participants felt that travel time for standby duty should be paid time.

Sleep-in duty

- Sleep in patterns and the length of the sleep-in duty is more regular and consistent across services than for example standby duty periods
- Whilst on sleep in duty employees get the benefits of reduced travel between shifts and provision of meals
- The level of compensation for undertaking a sleep-in duty is to reflect impact on home life, quality of downtime when not working and the issues of sleeping at a place of work
- Groups suggested to differentiate pay for bank holiday and/or weekend working
- The rate of pay for sleep-in duty was not raised as a particular concern by any of the working groups.

Recall to Work duty

- The benefit of operating recall is that it provides a flexibility that standby doesn't allow, and allows the department to supplement resource without the standby duty costs
- Recall is rarely invoked (last year around 140 claims were made across the Council)
- Different views exist on how to apply the recall rules; around the inclusion of the first 30 minutes of working time (which may include travel time) before any hours worked are claimed and therefore different practices are operating across the council
- Unclear regarding rule of when recall can be claimed when working can be claimed (from the moment you get the call, when you start to travel to site or when you arrive at site)
- Suggested enhancement of bank holiday recall payments
- There were various suggestions on how recall could be paid, such as minimum number of hours, maintain comparable rate to standby, lower rate to standby/sleep-in
- Recognised that being able to make a payment to incentivise employees is key to services cover arrangements

Benchmarking analysis

Appendix 3

The table below shows the relative level of pay and remuneration of standby duty based the equivalent duty for full week (9 session) equivalent to DCC's current terms and conditions and the pay difference for 8, 12 and 24 hour sessions.

| | Costs assumed for a full normal week of standby based on rates quoted equivalent to 9 DCC sessions | Payment for 8 Hrs | Payment for 12 Hrs | Payment for 24 Hrs | Payment for 24 Hrs BH |
|---|---|--------------------------|---------------------------|---------------------------|------------------------------|
| Derbyshire County Council | £243.18 | £27.02 | £27.02 | £54.04 | £54.04 |
| Council 1 (Borough Council, East Midlands) | £199.15 | £28.45 | £28.45 | £28.45 | £28.45 |
| Council 2 (County Council, East Midlands) | £128.18 | £19.89 | £29.83 | £59.66 | £59.66 |
| Council 3 (District Council, East Midlands) | £163.80 | £19.62 | £19.62 | £32.85 | £32.85 |
| Council 4 (District Council, East Midlands) | £114.75 | £9.81 | £9.81 | £32.85 | £32.85 |
| Council 5 (Borough Council, East Midlands) | £270 | £30 | £30.00 | £30.00 | £30.00 |
| Council 6 (County Council, East Midlands) | £268.47 | £29.83 | £29.83 | £59.66 | £59.66 |
| Council 7 (City Council, South) | £108.00 | £12.00 | £12.00 | £24.00 | £24.00 |
| Council 8 (County Council, South) | £92.52 | £10.28 | £10.28 | £20.56 | £20.56 |

| | | | | | |
|---|----------------|---------------|---------------|---------------|---------------|
| Council 8 (County Council, South) | £277.47 | £30.83 | £30.83 | £61.66 | £61.66 |
| Council 9 (County Council, South) | £180.00 | £20 | £20.00 | £40.00 | £40.00 |
| Council 10 (City Council, South) | £271.17 | £30.13 | £30.13 | £60.26 | £60.26 |
| Council 11 (County Council, East) | £151.56 | £16.84 | £16.84 | £33.67 | £33.67 |
| Council 12 (City Council) | £268.47 | £19.89 | £29.83 | £59.66 | £59.66 |
| Council 13 (Borough Council) | £179.01 | £13.26 | £19.89 | £39.78 | £59.13 |
| Average rate | £190.90 | £20.77 | £22.67 | £41.65 | £43.03 |
| Average rate for local comparisons | £198.98 | £21.34 | £24.66 | £42.86 | £45.28 |
| Average pay difference | £44.20 | £5.68 | £2.36 | £11.18 | £8.76 |

Sleep-in

Of the 9 respondents only 4 of the respondents have sleep-in duty, other Councils who have responded either do not have residential services or may have services where there are more working night staff. None of the Councils apply enhancement for bank holiday or weekend sleep-in duty.

Two of the responding Councils apply NJC sleep-in rates (£37.07), 1 Council pays £35.86 inclusive of first 30 minutes worked time and Council 9 pay £40 inclusive of first 30 minutes worked time

Recall

4 of the 9 councils that responded to benchmarking make payments for recall/call in sessions. None of the Councils apply enhancement for bank holiday or weekend recall duty.

- Council 1 (Borough Council, East Midlands), pays 1 hour of the hourly rate on top of any worked time.

- Council 5 (Borough Council, East Midlands), pays 2 hours at plain time as a minimum, then 2 hours at time plus half.
- Council 6 (County Council, East Midlands), pays minimum hour payment for attending site only
- Council 12 (County Council, East Midlands), pays £35.86 inclusive of first 30 mins worked time

Only Council 5 include travel time as worked time for recall payments.

