



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**27 July 2023**

**Joint Report of the Executive Director Children's Services, Executive Director Corporate Services and Transformation and the Director of Finance & ICT**

**Virement Approval**

**(Children & Families and Corporate Services & Budget)**

## **1. Divisions Affected**

1.1 County wide

## **2. Key Decision**

2.1 This is not a Key Decision.

## **3. Purpose of the Report**

3.1 The purpose of the report is to seek approval for the permanent virement of £460,000 from the Children's Services budget to the Legal and Democratic Services budget to enable Legal Services to meet the cost of external barristers and solicitors used to support the conduct of care proceedings.

## **4. Information and Analysis**

4.1 Legal Services conducts care proceedings on behalf of Children's Services. During these proceedings, it may be necessary to instruct Counsel (a barrister) due to the complexity of the case or due to lack of resource within the team to cover hearings. Similarly, it may be necessary

to instruct external solicitors to cope with peaks in workload within the section. These costs have historically been paid by Children's Services. It is proposed that the budget for these costs is now transferred to Legal Services on the basis that Legal Services is better placed to manage these costs and determine the appropriateness and necessity of the external instructions, being sighted on the overall workload of the team and the particular legal issues which the case may give rise to.

- 4.2 The expenditure on external counsel, external solicitors and locum solicitors undertaking child protection work averaged approximately £1.7m per annum during the period 2018-2020. This was reflective of the increasing volume of work in this area both nationally and locally. During the period 2015-2020 the number of children who were the subject of child protection plans increased by 24% and the number of children accommodated by the local authority during this period increased by 32%. During 2020 there was a further spike in child protection litigation during the covid lockdown with an approximate 30% increase in child protection related litigation. A review was undertaken in order to identify the most efficient and effective way of managing this area of work.
- 4.3 The review proposed a new structure with an increased level of staffing within the team to develop resilience and capacity. This restructure was approved and funding of £930,000 was approved in the 2022-23 budget for this purpose. The review highlighted the considerable difficulties in recruitment in this area which continues to be experienced across authorities nationally, resulting in a continuing use of locum lawyers.
- 4.4 One of the aims of the new structure was to enable an increased amount of advocacy to be undertaken in-house and specialist advocacy posts have been created to support this. The advocacy posts have been successfully filled, albeit relatively recently, and the rate of advocacy being undertaken in-house continues to rise to reflect this. In respect of standard directions, the rate of in-house coverage has risen from in the region of 5-10 % to 50%. Where locum posts continue to be used the focus of these posts is also the undertaking of advocacy for the authority which also supports the management of external expenditure in this area. The cost of Counsel for standard cases (not including those cases attributable to the Covid fund) reduced to £637,000 for the preceding 12 months. The average over the preceding 5 years was in the region of £895,000. The cost of cases being outsourced to private practice solicitors has also reduced to approximately £485,000 in the preceding 12 months from approximately £1m in 2018/19 at its highest point. As more of the vacant posts are filled it is intended that further reductions in external expenditure will be achieved. In the interim locum solicitors are being utilised to undertake the work in-house.

- 4.5 External Counsel fees and locum solicitor fees are currently charged to Children’s Services, and they hold the budget for this. During preceding years they have experienced an overspend on this budget which they have needed to address by way of requests for additional resources because sufficient resources were not included in the base budget necessitating annual pressure bids. This has been due to a variety of reasons including an increase in cases generally and also an increase in highly complex and high-profile cases.
- 4.6 On 2<sup>nd</sup> February 2023 Cabinet approved a pressure bid ongoing in the sum of £850,000 to cover the cost of external fees incurred in relation to the use of barristers and private practice lawyers to undertake care proceedings. This was based on an analysis of expenditure over the preceding 5 years. This sum has been placed in Legal and Democratic Services budget to discharge these fees.
- 4.7 In addition to this sum, it is proposed that that £460,000 should be permanently transferred into the Legal Services budget to enable barrister’s fees and private practice fees and locum solicitor fees to be discharged on an ongoing basis. It is considered by both departments that Legal Services is in a better position to manage and support the reduction in these costs as they have direct line management responsibility for the lawyers undertaking this area of work and are therefore better placed to determine when Counsel should be instructed to undertake work on a case. It is intended that the budget could be used with greater flexibility to ensure that the required resources are in place to meet the needs of the cases as they are received. This may involve the use of a temporary fixed term contract rather than a locum lawyer appointed via an agency, which would be a more cost effective option.
- 4.8 Legal Services will also discharge the fees which are incurred in relation to the instruction of process servers to serve documentation on the parties to proceedings. This is in the region of £20,000 per annum.
- 4.9 Children’s Services will continue to discharge court fees and costs incurred in relation to the instruction of experts in connection with legal proceedings (both during proceedings and also within the pre-proceedings phase.) Should any cost orders be made against the authority then these would be discharged by Children’s Services.
- 4.10 The below schedule details the proposed payment regime:

Type of expenditure	Proposed budget 2023-24
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Barristers Fees	£	895,000
Solicitors Fees	£	395,000
Agency staffing		included above
Process serving	£	20,000
Court Fees	£	540,000
Case related disbursements	£	273,042
<b>Total</b>	<b>£</b>	<b>2,123,042</b>

#### Funding available

Children's services (core budget)	£1,273,042
Growth budget allocated to Legal Services (ongoing)	£850,000
<b>Total</b>	<b>£2,123,042</b>

<b>Total funding required by Legal Services</b>	<b>£1,310,000</b>
Of which will be met from growth budget	£850,000
balance to be vired from Children's Services to Legal Services	<b>£460,000</b>
 Budget remaining with CS	 £813,042

## 5. Consultation

5.1 No formal consultation has been undertaken. The proposed virement has the approval of the respective senior managers within each department.

## 6. Alternative Options Considered

6.1 Children's Services could continue to discharge the costs of instructing barristers and private practice solicitors. It is considered more appropriate for Legal Services to undertake this role as they have greater proximity to the instructions and greater awareness of the necessity of this.

## **7. Implications**

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

## **8. Background Papers**

8.1 None identified.

## **9. Appendices**

9.1 Appendix 1- Implications.

## **10. Recommendations**

That Cabinet:

10.1 Approves the virement of £460,000 from the Children's Services Budget to the Legal and Democratic Services budget.

## **11.Reasons for Recommendations**

11.1 This will enable the budget to be managed by Legal Services who have the closest involvement with the legal aspects of the cases and who will be best placed to determine the necessity of external legal provision in relation to a particular case.

## **12. Is it necessary to waive the call in period?**

12.1 No

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### Implications

#### Financial

- 1.1 The budget pressure funding of £0.850m plus the virement from Children's Services of £0.460m, will give a total base budget of £1.310m. This will cover the Barristers fees, Solicitors Fees (Private Practice), Agency (Locums) and Process Servers. The allocations have been calculated by reviewing a 5-year average spend profile plus a contingency.
- 1.2 The increased in-house advocacy will help to reduce the external spend further, which will aid Legal Services in keeping within the current budget heading. The budget pressure also highlighted that £0.300m of savings could be delivered over three years from 2024-25 onwards.
- 1.3 In the 2021-22 and 2022-23, The Council incurred significant spend relating to two high-profile Child Protection cases 'B' and 'M'. The spend was picked up by the Covid fund, but this has now been exhausted. Should there be any further spend relating to these cases or should any other high-profile cases emerge additional funding may need to be sought as these cases are above and beyond the norm.

#### Legal

- 2.1 The Scheme of virement contained within the Constitution provides that amounts greater than £100,000 per annum resulting in a virement of funds between Departments require the approval of Cabinet, following a joint report of the Chief Financial Officer and the Strategic Director which must specify the proposed expenditure, the source of funding and must explain the implications in the current and future financial years.

#### Human Resources

- 3.1 None.

#### Information Technology

- 4.1 None.

#### Equalities Impact

- 5.1 None.

## **Corporate objectives and priorities for change**

6.1 The Council Plan commits to spending money wisely, making the best use of the resources that the Council has.

## **Other Consideration**

7.1 In preparing this report the relevance of the following factors has been considered: equality of opportunity, health, environmental, transport, property, social value and crime and disorder considerations.