

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

PERSONNEL COMMITTEE

REPORT OF THE HEAD OF CHILDREN AND YOUNG PEOPLE SERVICES - ANDREW JARRETT

SECTION A - MATTER FOR DECISION

WARDS AFFECTED: All wards

PROPOSAL FOR THE CREATION OF AN IN HOUSE ADVOCATE POST IN CHILDREN AND YOUNG PEOPLE SERVICES

Purpose of the Report

1. This report informs members of the savings made by Children and Young People services in 2014/15 and to date in 2015/16 in the cost of instructing external barristers to appear in complex child protection cases through the piloting of an In House Advocate at fixed cost.
2. It recommends:
 - a. The creation of an employed In House Advocate role using funds previously spent on external barristers
 - b. Authority to the head of HR to approve a market supplement of up to £15k to attract candidates of the calibre required to conduct lengthy and complex child protection cases if the post cannot be filled at Grade 11.

Executive Summary

3. This report sets out details of a pilot utilising a barrister working exclusively for the Council on child protection matters, which has run since 1.4.2014, and which has produced significant savings against the spend on external counsel, excluding QCs, by Children and Young People Services in 2013/14. In 2014/15 the saving was c.£48k and a similar saving is projected for 2015/16.
4. It demonstrates the desirability of putting in place more permanent arrangements to secure savings for the future.
5. It outlines the level of salary and benefits likely to be required to recruit to an In House Advocate post, and recommends the process to be followed to recruit.
6. Members will note that this is an instance of taking in-house a service which is normally purchased from external providers, and thereby making significant savings.

Background

7. The majority of advocacy on child protection cases is carried out by solicitors in the childcare team of the Council's legal services department. However, where a hearing is particularly complex and or lengthy, so that a specialist advocate is needed, the Head of Children and Young People Services approves the instructing of a suitable external barrister. The barrister is chosen depending on the complexity of the case, with Queen's Counsel (QCs) being instructed in the most complex of matters. The cost of external counsel where required on this basis is borne by Children and Young People Services.
8. In 2013/14 Children and Young People Services spent c.£143k on external barristers, excluding QCs. In early 2014 the opportunity arose to pilot an In House Advocate role, utilising a suitably experienced barrister who had worked in local government in the past, and was interested in returning to conduct advocacy. Analysis of the potential savings which this might generate demonstrated that savings in the region of £25 – 30k should be achievable through entering into a consultancy agreement with the barrister for her exclusive services to the Council for a period of one year at a cost of £75k + vat. The projected savings excluded the cost of QCs since:-
 - a. It is impossible to predict how many, if any, cases there may be in any one financial year upon which a QC is needed.
 - b. The cost of a QC, despite the benefit of consortium rates, is generally so high as to totally distort budget figures
 - c. There is no business model which can avoid use of QCs in appropriate cases.
9. The projected saving was also conservative, in that it allowed for:-
 - a. on-going cost of external barristers already instructed on cases where it would not be in the Council's interests to withdraw instructions
 - b. the risk that 'our' barrister may be unable to appear on a particular case because she had previously appeared for another party or family member
 - c. the risk that the Council may have two or more complex hearings justifying the use of barristers before separate Judges or in different courts on the same day, so that an external barrister would be needed on one of them
 - d. holiday and/or sickness absence of the barrister preventing her covering hearings.
10. Actual savings in 2014/15 proved higher than expected, at approximately £48k. Approximately £13k was spent on cases where an external barrister was already instructed, and around £7k on cases which the In House Advocate could not cover for whatever reason. Total spend excluding QCs was therefore c.£95k for the year.
11. Total legal spend on QCs was, however, significant in 2014/15, simply because there were an unpredictably high number of very complex cases. The pilot was, however, a success and has continued into 2015/16. Upon current predictions a saving of £50k compared with 2013/14 is anticipated.

12. An In House Advocate role also brings benefits less easily quantified in financial terms. The ability to involve the advocate at an early stage in proceedings rather than shortly before final hearing enables the case to developed along the desired track from the start.
13. It is not easy to establish a figure for average earnings at the Bar, whether nationally or locally, for a number of reasons. If one excludes earnings of barristers engaged primarily upon legally aided criminal work, for which figures are available as part of the on-going battle between the Bar and the Legal Aid Agency, there is little available data. This is because:
 - a. All barristers are self-employed individuals with no duty to report their earnings other than to HMRC.
 - b. Earnings vary enormously between barristers, depending upon length of call (experience), popularity with instructing solicitors, type of law practiced, and proportion of legally aided work undertaken.
 - c. Where disclosed, earnings are invariably gross and take no account of the expense of operating barristers' chambers, travel or associated costs.
14. Estimates of earnings from sources such as Careers Services and Guides to Graduates suggest a broad range, at 5yrs qualified, from a low of c. £40 up to £75k+. No data is currently available for barristers of greater experience, but a barrister at the 11 yr+ point can expect to earn rates of approximately 50% above someone of 5yrs experience. This figure is derived from the Consortium rates payable to barristers in participating chambers in south Wales, from which the Council benefits under an existing framework agreement. Gross earnings at 11yrs+ experience can exceed £100k.
15. Some limited assistance can be found in the salaries paid by Government bodies. In 2010, the Crown Prosecution Service paid its in house barristers, engaged to deal with serious Crown Court hearings, a salary in the region of £60-70k.
16. Advertisements for In-House Advocates by other Local Authorities are of less assistance, because of the wide variations in role. Many authorities have chosen to separate out the 'office' and 'advocacy' functions of their legal team, and employ solicitors or barristers as in house advocates to conduct the lower level advocacy work. Others adopt a similar division, but choose to instruct external counsel upon all matters; Carmarthenshire Council is an example of the latter, retaining a smaller legal team as a result. Solicitors or barristers employed to be the advocates upon all matters, rather than upon complex matters, generally attract salaries similar to the existing grades in legal services.
17. What is sought, however, and what has been piloted successfully over the past 18months, is the securing at a controlled cost of the services of an advocate of the calibre required to conduct the Council's complex childcare litigation, a person who had they been engaged in private practice at the Bar, might well have been selected on merit in competition with their peers to represent the Council on complex matters. Such a person is unlikely to be attracted by a salary within existing grades unless significantly increased by a market

supplement. The In House Advocate role has been job evaluated and graded at 11, a salary of £36,676-40, 217. Even relatively newly qualified barristers in South Wales can expect rather greater earnings than those figures, and it cannot be expected that any barrister of worthwhile experience and expertise is likely to apply for a post at that salary, even allowing for the benefits of relative security of income and access to the Local Government Pension Scheme (LGPS). On that basis, if a post is to be filled with a candidate of the calibre required, a market supplement of £15k or more is likely to be necessary. This would produce a gross salary of c. £55k, to which would be added the benefits of the LGPS, travel and subsistence expenses, sick and holiday pay. The overall cost to the Council, allowing for National Insurance, employer's contributions to LGPS, accommodation and IT would be in the region of £71.5k. Although this figure may seem low, compared to the estimates of earnings at the Bar quoted above as justification for a market supplement, it is considered that the relative security still offered by working for a local authority, the guarantee of regular income and the above fringe benefits, may render it sufficiently attractive. Should this prove to be incorrect, the financial savings likely to be achieved would permit a higher market supplement if considered appropriate while still delivering worthwhile savings. It is therefore proposed to advertise the post at Grade 11 to test the market, but if appointment cannot be made, it is proposed to apply a market supplement in line with the Council's Market Pay Supplement Scheme.

Financial Impact

18. A Financial impact assessment is enclosed at Appendix 1. As set out above, if this proposal is implemented, it is likely that the savings made in the cost to the Children and Young People Service legal fees budget of instructing external barristers (other than QCs) will far exceed the cost of this post.
19. If approved, it is proposed that the cost of this post is removed from the legal fees budget and transferred to the employee costs budget. No additional expenditure is sought.
20. Implementation of the proposal is also likely to impact positively upon the spending upon external counsel by the childcare team of Legal Services, through the potential availability of the In House Advocate to cover matters where external counsel would otherwise be used at the expense of Legal Services, and enhancement through support and guidance of the ability of Childcare team solicitors to appear in increasingly complex hearings and, as has happened only recently, a senior solicitor in the team to conduct a three day complex finding of fact hearing, upon which external counsel would otherwise certainly have been instructed.
21. If the recommendations are not implemented, it is likely that the current pilot will come to an early end, and external counsel will need to be instructed on all complex and lengthy matters, and the savings lost.

Equality Impacts:

22. The Council's Market Pay Supplement Scheme has been adhered to in relation to this proposal.

Workforce Impacts:

23. There are no other members of staff employed in a similar role, so applying a market supplement will not impact upon other jobs.

Legal Impacts:

24. There are no legal impacts arising from this report.

Consultation

25. There is no requirement under the Constitution for external consultation on this item.

Recommendations

26. That an In-House Advocate role is created within Children's Services at Grade 11 and advertised on this basis.
27. That the Head of HR has authority to approve the payment of a market supplement if there is evidence that the post cannot be appointed at the Grade 11 rate of pay (i.e. appointment cannot be made following external advertisement).

Reason for Proposed Decision

28. To secure significant savings in relation to the purchasing of external counsel.

Implementation of proposed decision

29. It is proposed for implementation after the three day call in period.

Appendices

30. Appendix 1 – Financial Appraisal

Officer contact

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APPENDIX 1

Financial Appraisal

	<u>2015-16</u>	-	<u>At Max</u>	<u>Comments</u>
	<u>£</u>		<u>£</u>	
<u>Annual Costs</u>				
Employee Costs (Financial Appraisal Statement)				
> Starting Salary (including NI & Pension)	55,000		55,000	<i>This represents a Grade 11 post at scale point 46.</i>
> Market Supplement	15,000		15,000	
Other Running Costs (specify)	1,500		1,500	<i>mobile phone, car allowances, travel and subsistence</i>
Total Recurring Costs	71,500		71,500	
<u>Funded By</u>				
Existing Budget Allocation	71,500		71,500	<i>£71,500 will be vired from the cyps legal budget to the staffing budget</i>
Additional Guideline Allocation				
Other (specify)				
Total Funding Available	71,500		71,500	