

**BRIGHTON AND HOVE CITY COUNCIL, EAST
SUSSEX COUNTY COUNCIL, SURREY COUNTY
COUNCIL AND WEST SUSSEX COUNTY
COUNCIL**



ORBIS PUBLIC LAW JOINT COMMITTEE

DATE: 20 JANUARY 2017

**LEAD OFFICERS: ABRAHAM GHEBRE-GHIORGHIS (EXECUTIVE LEAD OFFICER FOR STRATEGY, GOVERNANCE AND LAW, BHCC),
ANN CHARLTON (DIRECTOR OF LEGAL, DEMOCRATIC AND CULTURAL SERVICES, SCC),
PHILIP BAKER (ASSISTANT CHIEF EXECUTIVE, ESCC);
AND
TONY KERSHAW (DIRECTOR OF LAW, ASSURANCE AND STRATEGY, WSCC).**

SUBJECT: REVIEW OF ADVOCACY FOR CHILDCARE PROCEEDINGS

PURPOSE OF REPORT:

To update the Orbis Public Law Joint Committee on progress in carrying out a review of advocacy for childcare proceedings across the Orbis Public Law (OPL) partners.

Introduction

At the last meeting of the Joint Committee members were informed of the increasing volume of work across the four legal services as a result of the growth in child protection activity within Children's Services. Members will recall the graphs showing the impact on both internal resources and spend on external advocacy by the four legal services and were advised that this would be one of the priorities for action across Orbis Public Law (OPL).

During 2015/16 the number of child protection proceedings across the four OPL partners increased by 30% and this increase has continued at a similar rate during the present financial year. This work generates a range of legal activity to manage the collation of evidence and the preparation of a case for hearing. Such cases will develop over several months and many will be complex, requiring numerous court hearings before any final full hearing to resolve the plan for the child.

One solution to managing the costs has been the creation of 'in-house' advocacy teams. Across OPL there are seven full time equivalent lawyers who are employed solely as advocates (i.e. they carry no separate case load). In addition, however, around £1.7m was spent by OPL during 2015/16 on buying in external barristers to represent the local authority at child protection hearings. Legal Services cannot influence the number of cases that are received, nor the fixed costs (such as court fees) that arise, but may be able to reduce the costs of advocacy.

The OPL Executive Board has agreed to review advocacy arrangements across the

whole partnership:

- to reduce OPL expenditure on bought in advocacy for childcare hearings; and
- to examine the feasibility of a joint advocacy unit for OPL.

Recommendations:

It is recommended that the Orbis Public Law Joint Committee note progress being made in carrying out a review of advocacy for childcare proceedings across the Orbis Public Law (OPL) partners.

Reason for Recommendations:

To ensure the Joint Committee is informed about how OPL partners are working together to improve cost effectiveness and efficiency.

Details

1. Each of the four legal teams must operate to similar procedures and processes as these are prescribed by regulation and court rules but some of the application of these processes differ – in how they are done and by whom. Three councils use one county court centre for the work. Surrey uses a different centre. Work is therefore underway to align these arrangements to ensure as much commonality as possible in how the teams work and generate work for advocates.
2. Whilst each team uses in house advocates they tend to use the resource differently – in some cases the advocates carry some case work at times of particular pressure. In some cases the advocates undertake only short cases and in others only the longer or more complex matters. For some teams the advocates operate on a 'call-off' basis, as an external set of chambers might and in others the advocates are more integrated. Work is therefore underway to identify what would be the most beneficial role for a single advocacy team
3. Once the scope of the role is known the work will move to the practical arrangements for managing access to a shared resource so that it brings greatest benefit to OPL without any unfairness across the four councils. Consideration will also need to be given to the relationship the advocates will need to have with their children's services customer (the social work/advocate relationship in sensitive and complex cases can be critical) and with the local courts. Access to social work customers and courts may make a centralised base for a team of advocates impractical. However, there is scope to adopt a common approach to management and clerking. One officer acting as a point of contact could be an efficient way to organise advocate diaries and commitments and provide administrative support to the advocates.
4. The establishment of a single advocacy team will require a carefully considered plan for how it will be established, located and supported, how it will be funded, how it will be deployed and how each team will be able to draw upon it. In terms of the creation of the team the starting point will of course be the process of bringing together the current resources. The project group is also exploring recruitment options which include recruiting externally, offering development opportunities to existing staff wishing to change roles or setting up trainee positions.

5. The other focus of the work is to understand how external advocacy resources are sourced and paid for. In addition to the possibility of reducing cost by joining the commissioning arrangements together it may also be possible to avoid undue competition for external advocates across OPL. Adopting a common approach to the instruction and settlement of advocacy fees should bring a more efficient approach. Officers have reviewed the fee structures each partner authority has with various chambers. Working together gives greater purchasing power and provides an opportunity to negotiate more competitive rates through an OPL framework agreement. An OPL rate has already been successfully negotiated with one chamber which should realise a modest reduction in the overall fee paid by OPL partners. Furthermore, officers are meeting with another big supplier later in January.
6. The interface with these arrangements with the core case work of the child care lawyers is also important. The lawyers in each team will undertake much of the advocacy for the case they handle – perhaps only using an in-house or external advocate for longer hearings or where they are otherwise unavailable. The adoption of a common approach to the allocation of advocacy functions will need to be explored so as to achieve the optimum use of the time of all child care lawyers across OPL.
7. The other significant issue to factor into the work is the arrangement each Council has for the funding of child care legal costs. Whilst the core staff costs, including those for the in house advocates, is included in the shared budget that will operate in shadow form from April 2017, the four councils have different ways of dealing with the costs associated with sourcing external advocates – in two Councils these costs form part of the legal services budget but in the other two those costs are met by the instructing service department (Children’s Services) in slightly different ways. During the shadow budget year it will be necessary to consider options for how these external costs can be managed for the benefit of all four councils. Any savings - whether to legal services within OPL or to the four councils through a different budget line will be equally welcome.
8. The project group will, relying on the broad range of data associated with the use of internal and advocacy resources and projections for future work demands develop an evidence base and business case for an advocacy proposal

Next Steps

9. An advocates group of senior childcare lawyers has been set up to drive the review forward and is taking responsibility for key deliverables and actions. Progress reports are being made to the OPL Executive and Project Boards.
10. By the April the Executive Board should be in a position to make decisions on the establishment of an advocacy resource and related external costs. The aim would be to have an incremental approach to its implementation given the many complexities set out above.

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Appendices: None

Sources/background papers: None

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